

103D CONGRESS  
1ST SESSION

# H. R. 1758

To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V–X of title 49, United States Code, “Transportation”, and to make other technical improvements in the Code.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1993

Mr. BROOKS introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V–X of title 49, United States Code, “Transportation”, and to make other technical improvements in the Code.

1 *Be it enacted by the Senate and House of Representatives of the United*  
2 *States of America in Congress assembled,*

3 SUBTITLES II, III, AND V–X OF TITLE 49, UNITED STATES CODE

4 SECTION 1. (a) Certain general and permanent laws of the United States,  
5 related to transportation, are revised, codified, and enacted by subsections  
6 (c)–(e) of this section without substantive change as subtitles II, III, and  
7 V–X of title 49, United States Code, “Transportation”. Those laws may be  
8 cited as “49 U.S.C. -----”.

(b) Title 49, United States Code, is amended by striking the table of subtitles at the beginning of the title and substituting the following new table of subtitles:

SUBTITLE	Sec.
"I. DEPARTMENT OF TRANSPORTATION .....	101
"II. OTHER GOVERNMENT AGENCIES .....	1101
"III. GENERAL AND INTERMODAL PROGRAMS .....	5101
"IV. INTERSTATE COMMERCE .....	10101
"V. RAIL PROGRAMS .....	20101
"VI. MOTOR VEHICLE AND DRIVER PROGRAMS .....	30101
"VII. AVIATION PROGRAMS .....	40101
"VIII. PIPELINES .....	60101
"IX. COMMERCIAL SPACE TRANSPORTATION .....	70101
"X. MISCELLANEOUS .....	80101".

(c) Title 49, United States Code, is amended by striking subtitle II, except that chapter 31 (comprising sections 3101–3104) of subtitle II is redesignated and restated as chapter 315 (comprising sections 31501–31504) of subtitle VI of title 49, as enacted by subsection (e) of this section.

(d) Title 49, United States Code, is amended by adding the following immediately after subtitle I:

## **SUBTITLE II—OTHER GOVERNMENT AGENCIES**

CHAPTER	Sec.
11. NATIONAL TRANSPORTATION SAFETY BOARD .....	1101

## **CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD**

### SUBCHAPTER I—GENERAL

Sec.

1101. Definitions.

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- 1112. Special boards of inquiry on air transportation safety.
- 1113. Administrative.
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- 1115. Training.
- 1116. Reports and studies.
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### SUBCHAPTER I—GENERAL

#### **§ 1101. Definitions**

Section 40102(a) of this title applies to this chapter.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

**§ 1111. General organization**

(a) ORGANIZATION.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) APPOINTMENT OF MEMBERS.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) TERMS OF OFFICE AND REMOVAL.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) DUTIES AND POWERS OF CHAIRMAN.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

(1) appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;

(2) distribute business among the officers, employees, and administrative units of the Board; and

(3) supervise the expenditures of the Board.

(f) QUORUM.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) OFFICES, BUREAUS, AND DIVISIONS.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(1) aviation.

(2) highway and motor vehicle.

(3) rail and tracked vehicle.

(4) pipeline.

(h) SEAL.—The Board shall have a seal that shall be judicially recognized.

**§ 1112. Special boards of inquiry on air transportation safety**

(a) ESTABLISHMENT.—If an accident involves a substantial question about public safety in air transportation, the National Transportation Safety Board may establish a special board of inquiry composed of—

(1) one member of the Board acting as Chairman; and

(2) 2 members representing the public, appointed by the President on notification of the establishment of the special board of inquiry.

(b) QUALIFICATIONS AND CONFLICTS OF INTEREST.—The public members of a special board of inquiry must be qualified by training and experience to participate in the inquiry and may not have a pecuniary interest in an aviation enterprise involved in the accident to be investigated.

(c) AUTHORITY.—A special board of inquiry has the same authority that the Board has under this chapter.

**§ 1113. Administrative**

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board, and when authorized by it, a member of the Board, an administrative law judge employed by or assigned to the Board, or an officer or employee designated by the Chairman of the Board, may conduct hearings to carry out this chapter, administer oaths, and require, by subpoena or otherwise, necessary witnesses and evidence.

(2) A witness or evidence in a hearing under paragraph (1) of this subsection may be summoned or required to be produced from any place in the United States to the designated place of the hearing. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A subpoena shall be issued under the signature of the Chairman or the Chairman's delegate but may be served by any person designated by the Chairman.

(4) If a person disobeys a subpoena, order, or inspection notice of the Board, the Board may bring a civil action in a district court of the United States to enforce the subpoena, order, or notice. An action under this paragraph may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpoena, order, or notice as a contempt of court.

(b) ADDITIONAL POWERS.—(1) The Board may—

(A) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(B) make agreements and other transactions necessary to carry out this chapter without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(D) confer with employees and use services, records, and facilities of State and local governmental authorities;

(E) appoint advisory committees composed of qualified private citizens and officials of the Government and State and local governments as appropriate;

(F) accept voluntary and uncompensated services notwithstanding another law;

(G) accept gifts of money and other property;

(H) make contracts with nonprofit entities to carry out studies related to duties and powers of the Board; and

(I) require that the departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries provide appropriate consideration for the reasonable costs of goods and services supplied by the Board.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection to be credited to the appropriation of the Board.

(c) SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board submits to the President or the Director of the Office of Management and Budget a budget estimate, budget request, supplemental budget estimate, other budget information, a legislative recommendation, prepared testimony for congressional hearings, or comments on legislation, the Board must submit a copy to Congress at the same time. An officer, department, agency, or instrumentality of the Government may not require the Board to submit the estimate, request, information, recommendation, testimony, or comments to another officer, department, agency, or instrumentality of the Government for approval, comment, or review before being submitted to Congress.

(d) LIAISON COMMITTEES.—The Chairman may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies, and instrumentalities of the Government, State and local governmental authorities, and independent standard-setting authorities

that carry out programs and activities related to transportation safety. The Board may designate representatives to serve on or assist those committees.

(e) INQUIRIES.—The Board, or an officer or employee of the Board designated by the Chairman, may conduct an inquiry to obtain information related to transportation safety after publishing notice of the inquiry in the Federal Register. The Board or designated officer or employee may require by order a department, agency, or instrumentality of the Government, a State or local governmental authority, or a person transporting individuals or property in commerce to submit to the Board a written report and answers to requests and questions related to a duty or power of the Board. The Board may prescribe the time within which the report and answers must be given to the Board or to the designated officer or employee. Copies of the report and answers shall be made available for public inspection.

(f) REGULATIONS.—The Board may prescribe regulations to carry out this chapter.

#### **§ 1114. Disclosure, availability, and use of information**

(a) GENERAL.—Except as provided in subsections (b) and (c) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

(b) TRADE SECRETS.—(1) The Board may disclose information related to a trade secret referred to in section 1905 of title 18 only—

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(c) COCKPIT VOICE RECORDINGS AND TRANSCRIPTS.—(1) The Board may not disclose publicly any part of a cockpit voice recorder recording or

transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to cockpit voice recorder information in making safety recommendations.

(d) DRUG TESTS.—(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

(A) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

(B) any laboratory record documenting that the test is confirmed positive.

(2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552(b)(3) of title 5—

(A) a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and

(B) medical information provided by the tested officer or employee related to the test or a review of the test.

(3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—

(A) the fitness of the tested officer or employee is at issue in the investigation; and

(B) the use of that record is necessary to develop the evidentiary record.

**§ 1115. Training**

(a) DEFINITION.—In this section, “Institute” means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) USE OF INSTITUTE SERVICES.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) FEES.—(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.

**§ 1116. Reports and studies**

(a) PERIODIC REPORTS.—The National Transportation Safety Board shall report periodically to Congress, departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities concerned with transportation safety, and other interested persons. The report shall—

(1) advocate meaningful responses to reduce the likelihood of transportation accidents similar to those investigated by the Board; and

(2) propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.

(b) STUDIES, INVESTIGATIONS, AND OTHER REPORTS.—The Board also shall—

(1) carry out special studies and investigations about transportation safety, including avoiding personal injury;



(2) examine techniques and methods of accident investigation and periodically publish recommended procedures for accident investigations;

(3) prescribe requirements for persons reporting accidents and aviation incidents that—

(A) may be investigated by the Board under this chapter; or

(B) involve public aircraft (except aircraft of the armed forces and the intelligence agencies);

(4) evaluate, examine the effectiveness of, and publish the findings of the Board about the transportation safety consciousness of other departments, agencies, and instrumentalities of the Government and their effectiveness in preventing accidents; and

(5) evaluate the adequacy of safeguards and procedures for the transportation of hazardous material and the performance of other departments, agencies, and instrumentalities of the Government responsible for the safe transportation of that material.

#### **§ 1117. Annual report**

The National Transportation Safety Board shall submit a report to Congress on July 1 of each year. The report shall include—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the prior calendar year;

(2) a survey and summary of the recommendations made by the Board to reduce the likelihood of recurrence of those accidents together with the observed response to each recommendation;

(3) a detailed appraisal of the accident investigation and accident prevention activities of other departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities having responsibility for those activities under a law of the United States or a State; and

(4) an evaluation conducted every 2 years of transportation safety and recommendations for legislative and administrative action and change.

#### **§ 1118. Authorization of appropriations**

(a) GENERAL.—Not more than \$38,800,000 may be appropriated to the National Transportation Safety Board for the fiscal year ending September 30, 1993, to carry out this chapter.

(b) EMERGENCY FUND.—The Board has an emergency fund of \$1,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. The following amounts may be appropriated to the fund:

(1) \$1,000,000 to establish the fund.

(2) amounts equal to amounts expended annually out of the fund.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

### SUBCHAPTER III—AUTHORITY

#### **§ 1131. General authority**

(a) GENERAL.—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title;

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on the navigable waters or territorial sea of the United States, or involving a vessel of the United States, under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic;

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

(2) An investigation by the Board under paragraph (1)(A)–(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident.

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)–(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and

1 instrumentalities shall ensure that appropriate information developed about  
2 the accident is exchanged in a timely manner.

3 (b) ACCIDENTS INVOLVING PUBLIC VESSELS.—(1) The Board or the  
4 head of the department in which the Coast Guard is operating shall inves-  
5 tigate and establish the facts, circumstances, and cause or probable cause  
6 of a marine accident involving a public vessel and any other vessel. The re-  
7 sults of the investigation shall be made available to the public.

8 (2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this sec-  
9 tion do not affect the responsibility, under another law of the United States,  
10 of the head of the department in which the Coast Guard is operating.

11 (c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NON-  
12 FEASANCE.—(1) When asked by the Board, the Secretary of Transportation  
13 may—

14 (A) investigate an accident described under subsection (a) or (b) of  
15 this section in which misfeasance or nonfeasance by the Government  
16 has not been alleged; and

17 (B) report the facts and circumstances of the accident to the Board.

18 (2) The Board shall use the report in establishing cause or probable cause  
19 of an accident described under subsection (a) or (b) of this section.

20 (d) ACCIDENT REPORTS.—The Board shall report on the facts and cir-  
21 cumstances of each accident investigated by it under subsection (a) or (b)  
22 of this section. The Board shall make each report available to the public  
23 at reasonable cost.

## 24 **§ 1132. Civil aircraft accident investigations**

25 (a) GENERAL AUTHORITY.—(1) The National Transportation Safety  
26 Board shall investigate—

27 (A) each accident involving civil aircraft; and

28 (B) with the participation of appropriate military authorities, each  
29 accident involving both military and civil aircraft.

30 (2) A person employed under section 1113(b)(1) of this title that is con-  
31 ducting an investigation or hearing about an aircraft accident has the same  
32 authority to conduct the investigation or hearing as the Board.

33 (b) NOTIFICATION AND REPORTING.—The Board shall prescribe regula-  
34 tions governing the notification and reporting of accidents involving civil air-  
35 craft.

36 (c) PARTICIPATION OF SECRETARY.—The Board shall provide for the  
37 participation of the Secretary of Transportation in the investigation of an  
38 aircraft accident under this chapter when participation is necessary to carry  
39 out the duties and powers of the Secretary. However, the Secretary may not  
40 participate in establishing probable cause.

(d) ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.—If an accident involves only military aircraft and a duty of the Secretary is or may be involved, the military authorities shall provide for the participation of the Secretary. In any other accident involving only military aircraft, the military authorities shall give the Board or Secretary information the military authorities decide would contribute to the promotion of air safety.

**§ 1133. Review of other agency action**

The National Transportation Safety Board shall review on appeal—

(1) the denial, amendment, modification, suspension, or revocation of a certificate issued by the Secretary of Transportation under section 44703, 44709, or 44710 of this title;

(2) the revocation of a certificate of registration under section 44106 of this title; and

(3) a decision of the head of the department in which the Coast Guard is operating on an appeal from the decision of an administrative law judge denying, revoking, or suspending a license, certificate, document, or register in a proceeding under section 6101, 6301, or 7503, chapter 77, or section 9303 of title 46.

**§ 1134. Inspections and autopsies**

(a) ENTRY AND INSPECTION.—An officer or employee of the National Transportation Safety Board—

(1) on display of appropriate credentials and written notice of inspection authority, may enter property where a transportation accident has occurred or wreckage from the accident is located and do anything necessary to conduct an investigation; and

(2) during reasonable hours, may inspect any record, process, control, or facility related to an accident investigation under this chapter.

(b) INSPECTION, TESTING, PRESERVATION, AND MOVING OF AIRCRAFT AND PARTS.—(1) In investigating an aircraft accident under this chapter, the Board may inspect and test, to the extent necessary, any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce.

(2) Any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce shall be preserved, and may be moved, only as provided by regulations of the Board.

(c) AVOIDING UNNECESSARY INTERFERENCE AND PRESERVING EVIDENCE.—In carrying out subsection (a)(1) of this section, an officer or employee may examine or test any vehicle, vessel, rolling stock, track, or pipeline component. The examination or test shall be conducted in a way that—

(1) does not interfere unnecessarily with transportation services provided by the owner or operator of the vehicle, vessel, rolling stock, track, or pipeline component; and

(2) to the maximum extent feasible, preserves evidence related to the accident, consistent with the needs of the investigation and with the co-operation of that owner or operator.

(d) EXCLUSIVE AUTHORITY OF BOARD.—Only the Board has the authority to decide on the way in which testing under this section will be conducted, including decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test. The Board shall make any of those decisions based on the needs of the investigation being conducted and, when applicable, this subsection and subsections (a), (c), and (e) of this section.

(e) PROMPTNESS OF TESTS AND AVAILABILITY OF RESULTS.—An inspection, examination, or test under subsection (a) or (c) of this section shall be started and completed promptly, and the results shall be made available.

(f) AUTOPSIES.—(1) The Board may order an autopsy to be performed and have other tests made when necessary to investigate an accident under this chapter. However, local law protecting religious beliefs related to autopsies shall be observed to the extent consistent with the needs of the accident investigation.

(2) With or without reimbursement, the Board may obtain a copy of an autopsy report performed by a State or local official on an individual who died because of a transportation accident investigated by the Board under this chapter.

### **§1135. Secretary of Transportation's responses to safety recommendations**

(a) GENERAL.—When the National Transportation Safety Board submits a recommendation about transportation safety to the Secretary of Transportation, the Secretary shall give a formal written response to each recommendation not later than 90 days after receiving the recommendation. The response shall indicate whether the Secretary intends—

(1) to carry out procedures to adopt the complete recommendation;

(2) to carry out procedures to adopt a part of the recommendation;

or

(3) to refuse to carry out procedures to adopt the recommendation.

(b) TIMETABLE FOR COMPLETING PROCEDURES AND REASONS FOR REFUSALS.—A response under subsection (a)(1) or (2) of this section shall include a copy of a proposed timetable for completing the procedures. A response under subsection (a)(2) of this section shall detail the reasons for

the refusal to carry out procedures on the remainder of the recommendation. A response under subsection (a)(3) of this section shall detail the reasons for the refusal to carry out procedures.

(c) PUBLIC AVAILABILITY.—The Board shall make a copy of each recommendation and response available to the public at reasonable cost.

(d) REPORTS TO CONGRESS.—The Secretary shall submit to Congress on January 1 of each year a report containing each recommendation on transportation safety made by the Board to the Secretary during the prior year and a copy of the Secretary's response to each recommendation.

#### SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

### **§ 1151. Aviation enforcement**

(a) CIVIL ACTIONS BY BOARD.—The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS BY ATTORNEY GENERAL.—On request of the Board, the Attorney General may bring a civil action in an appropriate court—

(1) to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

(2) to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) PARTICIPATION OF BOARD.—On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title.

### **§ 1152. Joinder and intervention in aviation proceedings**

A person interested in or affected by a matter under consideration in a proceeding or a civil action to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title, or a regulation prescribed or order issued under any of those sections, may be joined as a party or permitted to intervene in the proceeding or civil action.

### **§ 1153. Judicial review**

(a) GENERAL.—The appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit may review a final order of the National Transportation Safety Board under this chapter. A person disclosing a substantial interest in the order may apply for review by filing a petition not later than 60 days after the order of the Board is issued.

(b) AVIATION MATTERS.—(1) A person disclosing a substantial interest in an order related to an aviation matter issued by the Board under this chapter may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60 days only if there was a reasonable ground for not filing within that 60-day period.

(2) When a petition is filed under paragraph (1) of this subsection, the clerk of the court immediately shall send a copy of the petition to the Board. The Board shall file with the court a record of the proceeding in which the order was issued.

(3) When the petition is sent to the Board, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Board to conduct further proceedings. After reasonable notice to the Board, the court may grant interim relief by staying the order or taking other appropriate action when cause for its action exists. Findings of fact by the Board, if supported by substantial evidence, are conclusive.

(4) In reviewing an order under this subsection, the court may consider an objection to an order of the Board only if the objection was made in the proceeding conducted by the Board or if there was a reasonable ground for not making the objection in the proceeding.

(5) A decision by a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

**§ 1154. Discovery and use of cockpit voice and other material**

(a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—

(A) any part of a cockpit voice recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114(c) of this title; and

(B) a cockpit voice recorder recording.

(2)(A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit voice recorder transcript if, after an in camera review of the transcript, the court decides that—

(i) the part of the transcript made available to the public under section 1114(c) of this title does not provide the party with sufficient information for the party to receive a fair trial; and

1 (ii) discovery of additional parts of the transcript is necessary to pro-  
 2 vide the party with sufficient information for the party to receive a fair  
 3 trial.

4 (B) A court may allow discovery, or require production for an in camera  
 5 review, of a cockpit voice recorder transcript that the Board has not made  
 6 available under section 1114(c) of this title only if the cockpit voice recorder  
 7 recording is not available.

8 (3) Except as provided in paragraph (4)(A) of this subsection, a court  
 9 may allow discovery by a party of a cockpit voice recorder recording if, after  
 10 an in camera review of the recording, the court decides that—

11 (A) the parts of the transcript made available to the public under  
 12 section 1114(c) of this title and to the party through discovery under  
 13 paragraph (2) of this subsection do not provide the party with suffi-  
 14 cient information for the party to receive a fair trial; and

15 (B) discovery of the cockpit voice recorder recording is necessary to  
 16 provide the party with sufficient information for the party to receive  
 17 a fair trial.

18 (4)(A) When a court allows discovery in a judicial proceeding of a part  
 19 of a cockpit voice recorder transcript not made available to the public under  
 20 section 1114(c) of this title or a cockpit voice recorder recording, the court  
 21 shall issue a protective order—

22 (i) to limit the use of the part of the transcript or the recording to  
 23 the judicial proceeding; and

24 (ii) to prohibit dissemination of the part of the transcript or the re-  
 25 cording to any person that does not need access to the part of the tran-  
 26 script or the recording for the proceeding.

27 (B) A court may allow a part of a cockpit voice recorder transcript not  
 28 made available to the public under section 1114(c) of this title or a cockpit  
 29 voice recorder recording to be admitted into evidence in a judicial proceed-  
 30 ing, only if the court places the part of the transcript or the recording under  
 31 seal to prevent the use of the part of the transcript or the recording for  
 32 purposes other than for the proceeding.

33 (5) This subsection does not prevent the Board from referring at any  
 34 time to cockpit voice recorder information in making safety recommenda-  
 35 tions.

36 (b) REPORTS.—No part of a report of the Board, related to an accident  
 37 or an investigation of an accident, may be admitted into evidence or used  
 38 in a civil action for damages resulting from a matter mentioned in the re-  
 39 port.



**§ 1155. Aviation penalties**

(a) CIVIL PENALTY.—(1) A person violating section 1132 or 1134(b) or (f)(1) of this title or a regulation prescribed or order issued under either of those sections is liable to the United States Government for a civil penalty of not more than \$1,000. A separate violation occurs for each day a violation continues.

(2) This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3) The Board may compromise the amount of a civil penalty imposed under this subsection.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) A civil penalty under this subsection may be collected by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) CRIMINAL PENALTY.—A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

**SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS**

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**CHAPTER 51—TRANSPORTATION OF HAZARDOUS MATERIAL**

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## **§ 5101. Purpose**

The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

## **§ 5102. Definitions**

In this chapter—

(1) “commerce” means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State;

or

(B) that affects trade or transportation between a place in a State and a place outside of the State.

(2) “hazardous material” means a substance or material the Secretary of Transportation designates under section 5103(a) of this title.

(3) “hazmat employee”—

(A) means an individual—

(i) employed by a hazmat employer; and

(ii) who during the course of employment directly affects hazardous material transportation safety as the Secretary decides by regulation;

(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

(C) includes an individual, employed by a hazmat employer, who during the course of employment—

(i) loads, unloads, or handles hazardous material;

(ii) manufactures, reconditions, or tests containers, drums, and packages represented as qualified for use in transporting hazardous material;

(iii) prepares hazardous material for transportation;

1 (iv) is responsible for the safety of transporting hazardous  
2 material; or

3 (v) operates a vehicle used to transport hazardous material.

4 (4) “hazmat employer”—

5 (A) means a person using at least one employee of that person  
6 in connection with—

7 (i) transporting hazardous material in commerce;

8 (ii) causing hazardous material to be transported in com-  
9 merce; or

10 (iii) manufacturing, reconditioning, or testing containers,  
11 drums, and packages represented as qualified for use in  
12 transporting hazardous material;

13 (B) includes an owner-operator of a motor vehicle transporting  
14 hazardous material in commerce; and

15 (C) includes a department, agency, or instrumentality of the  
16 United States Government, or an authority of a State, political  
17 subdivision of a State, or Indian tribe, carrying out an activity de-  
18 scribed in subclause (A)(i), (ii), or (iii) of this clause (4).

19 (5) “imminent hazard” means the existence of a condition that pre-  
20 sents a substantial likelihood that death, serious illness, severe personal  
21 injury, or a substantial endangerment to health, property, or the envi-  
22 ronment may occur before the reasonably foreseeable completion date  
23 of a formal proceeding begun to lessen the risk of that death, illness,  
24 injury, or endangerment.

25 (6) “Indian tribe” has the same meaning given that term in section  
26 4 of the Indian Self-Determination and Education Assistance Act (25  
27 U.S.C. 450b).

28 (7) “motor carrier” means a motor common carrier, motor contract  
29 carrier, motor private carrier, and freight forwarder as those terms are  
30 defined in section 10102 of this title.

31 (8) “national response team” means the national response team es-  
32 tablished under the national contingency plan established under section  
33 105 of the Comprehensive Environmental Response, Compensation, and  
34 Liability Act of 1980 (42 U.S.C. 9605).

35 (9) “person”, in addition to its meaning under section 1 of title 1—

36 (A) includes a government, Indian tribe, or authority of a gov-  
37 ernment or tribe offering hazardous material for transportation in  
38 commerce or transporting hazardous material to further a com-  
39 mercial enterprise; but

40 (B) does not include—

41 (i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.

(10) “public sector employee”—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) “State” means—

(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title, a State of the United States and the District of Columbia.

(12) “transports” or “transportation” means the movement of property and loading, unloading, or storage incidental to the movement.

(13) “United States” means all of the States.

### **§ 5103. General regulatory authority**

(a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary of Transportation shall designate material (including an explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) REGULATIONS FOR SAFE TRANSPORTATION.—(1) The Secretary shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

(A) apply to a person—

(i) transporting hazardous material in commerce;

(ii) causing hazardous material to be transported in commerce;

or

(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container that is rep-

1           resented, marked, certified, or sold by that person as qualified for  
2           use in transporting hazardous material in commerce; and

3           (B) shall govern safety aspects of the transportation of hazardous  
4           material the Secretary considers appropriate.

5           (2) A proceeding to prescribe the regulations must include an opportunity  
6           for informal oral presentations.

7           **§ 5104. Representation and tampering**

8           (a) REPRESENTATION.—A person may represent, by marking or other-  
9           wise, that—

10           (1) a container or package for transporting hazardous material is  
11           safe, certified, or complies with this chapter only if the container or  
12           package meets the requirements of each regulation prescribed under  
13           this chapter; or

14           (2) hazardous material is present in a package, container, motor ve-  
15           hicle, rail freight car, aircraft, or vessel only if the material is present.

16           (b) TAMPERING.—A person may not alter, remove, destroy, or otherwise  
17           tamper unlawfully with—

18           (1) a marking, label, placard, or description on a document required  
19           under this chapter or a regulation prescribed under this chapter; or

20           (2) a package, container, motor vehicle, rail freight car, aircraft, or  
21           vessel used to transport hazardous material.

22           **§ 5105. Transporting certain highly radioactive material**

23           (a) DEFINITIONS.—In this section, “high-level radioactive waste” and  
24           “spent nuclear fuel” have the same meanings given those terms in section  
25           2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

26           (b) TRANSPORTATION SAFETY STUDY.—In consultation with the Sec-  
27           retary of Energy, the Nuclear Regulatory Commission, potentially affected  
28           States and Indian tribes, representatives of the rail transportation industry,  
29           and shippers of high-level radioactive waste and spent nuclear fuel, the Sec-  
30           retary of Transportation shall conduct a study comparing the safety of  
31           using trains operated only to transport high-level radioactive waste and  
32           spent nuclear fuel with the safety of using other methods of rail transpor-  
33           tation for transporting that waste and fuel. The Secretary of Transportation  
34           shall submit to Congress not later than November 16, 1991, a report on  
35           the results of the study.

36           (c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than Novem-  
37           ber 16, 1992, after considering the results of the study conducted under  
38           subsection (b) of this section, the Secretary of Transportation shall pre-  
39           scribe amendments to existing regulations that the Secretary considers ap-  
40           propriate to provide for the safe rail transportation of high-level radioactive

1 waste and spent nuclear fuel, including trains operated only for transporting  
 2 high-level radioactive waste and spent nuclear fuel.

3 (d) ROUTES AND MODES STUDY.—Not later than November 16, 1991,  
 4 the Secretary of Transportation shall conduct a study to decide which fac-  
 5 tors, if any, shippers and carriers should consider when selecting routes and  
 6 modes that would enhance overall public safety related to the transportation  
 7 of high-level radioactive waste and spent nuclear fuel. The study shall in-  
 8 clude—

9 (1) notice and opportunity for public comment; and

10 (2) an assessment of the degree to which at least the following affect  
 11 the overall public safety of the transportation:

12 (A) population densities.

13 (B) types and conditions of modal infrastructures (including  
 14 highways, railbeds, and waterways).

15 (C) quantities of high-level radioactive waste and spent nuclear  
 16 fuel.

17 (D) emergency response capabilities.

18 (E) exposure and other risk factors.

19 (F) terrain considerations.

20 (G) continuity of routes.

21 (H) available alternative routes.

22 (I) environmental impact factors.

23 (e) INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATE-  
 24 RIAL.—(1) Not later than November 16, 1991, the Secretary of Transpor-  
 25 tation shall require by regulation that before each use of a motor vehicle  
 26 to transport a highway-route-controlled quantity of radioactive material in  
 27 commerce, the vehicle shall be inspected and certified as complying with this  
 28 chapter and applicable United States motor carrier safety laws and regula-  
 29 tions. The Secretary may require that the inspection be carried out by an  
 30 authorized United States Government inspector or according to appropriate  
 31 State procedures.

32 (2) The Secretary of Transportation may allow a person, transporting or  
 33 causing to be transported a highway-route-controlled quantity of radioactive  
 34 material, to inspect the motor vehicle used to transport the material and  
 35 to certify that the vehicle complies with this chapter. The inspector quali-  
 36 fication requirements the Secretary prescribes for an individual inspecting  
 37 a motor vehicle apply to an individual conducting an inspection under this  
 38 paragraph.

### 39 **§ 5106. Handling criteria**

40 The Secretary of Transportation may prescribe criteria for handling haz-  
 41 ardous material, including—

- 1 (1) a minimum number of personnel;
- 2 (2) minimum levels of training and qualifications for personnel;
- 3 (3) the kind and frequency of inspections;
- 4 (4) equipment for detecting, warning of, and controlling risks posed
- 5 by the hazardous material;
- 6 (5) specifications for the use of equipment and facilities used in han-
- 7 dling and transporting the hazardous material; and
- 8 (6) a system of monitoring safety procedures for transporting the
- 9 hazardous material.

10 **§ 5107. Hazmat employee training requirements and grants**

11 (a) TRAINING REQUIREMENTS.—The Secretary of Transportation shall  
 12 prescribe by regulation requirements for training that a hazmat employer  
 13 must give hazmat employees of the employer on the safe loading, unloading,  
 14 handling, storing, and transporting of hazardous material and emergency  
 15 preparedness for responding to an accident or incident involving the trans-  
 16 portation of hazardous material. The regulations—

17 (1) shall establish the date, as provided by subsection (b) of this sec-  
 18 tion, by which the training shall be completed; and

19 (2) may provide for different training for different classes or cat-  
 20 egories of hazardous material and hazmat employees.

21 (b) BEGINNING AND COMPLETING TRAINING.—A hazmat employer shall  
 22 begin the training of hazmat employees of the employer not later than 6  
 23 months after the Secretary of Transportation prescribes the regulations  
 24 under subsection (a) of this section. The training shall be completed within  
 25 a reasonable period of time after—

26 (1) 6 months after the regulations are prescribed; or

27 (2) the date on which an individual is to begin carrying out a duty  
 28 or power of a hazmat employee if the individual is employed as a  
 29 hazmat employee after the 6-month period.

30 (c) CERTIFICATION OF TRAINING.—After completing the training, each  
 31 hazmat employer shall certify, with documentation the Secretary of Trans-  
 32 portation may require by regulation, that the hazmat employees of the em-  
 33 ployer have received training and have been tested on appropriate transpor-  
 34 tation areas of responsibility, including at least one of the following:

35 (1) recognizing and understanding the Department of Transpor-  
 36 tation hazardous material classification system.

37 (2) the use and limitations of the Department hazardous material  
 38 placarding, labeling, and marking systems.

39 (3) general handling procedures, loading and unloading techniques,  
 40 and strategies to reduce the probability of release or damage during or  
 41 incidental to transporting hazardous material.

(4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.

(5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.

(6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.

(7) applicable hazardous material transportation regulations.

(8) personal protection techniques.

(9) preparing a shipping document for transporting hazardous material.

(d) COORDINATION OF TRAINING REQUIREMENTS.—In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary of Transportation shall ensure that the training requirements prescribed under this section do not conflict with—

(1) the requirements of regulations the Secretary of Labor prescribes related to hazardous waste operations and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and

(2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.

(e) TRAINING GRANTS.—In consultation with the Secretaries of Transportation and Labor and the Administrator, the Director of the National Institute of Environmental Health Sciences may make grants to train hazmat employees under this section. A grant under this subsection shall be made to a nonprofit organization that demonstrates—

(1) expertise in conducting a training program for hazmat employees; and

(2) the ability to reach and involve in a training program a target population of hazmat employees.

(f) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)–(d) of this section.

(2) An action of the Secretary of Transportation under subsections (a)–(d) of this section and sections 5106, 5108(a)–(g)(1) and (h), and 5109 of this title is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.



1   **§ 5108. Registration**

2       (a) PERSONS REQUIRED TO FILE.—(1) A person shall file a registration  
3 statement with the Secretary of Transportation under this subsection if the  
4 person is transporting or causing to be transported in commerce any of the  
5 following:

6           (A) a highway-route-controlled quantity of radioactive material.

7           (B) more than 25 kilograms of a class A or B explosive in a motor  
8 vehicle, rail car, or transport container.

9           (C) more than one liter in each package of a hazardous material the  
10 Secretary designates as extremely toxic by inhalation.

11           (D) hazardous material in a bulk package, container, or tank, as de-  
12 fined by the Secretary, if the package, container, or tank has a capacity  
13 of at least 3,500 gallons or more than 468 cubic feet.

14           (E) a shipment of at least 5,000 pounds (except in a bulk packaging)  
15 of a class of hazardous material for which placarding of a vehicle, rail  
16 car, or freight container is required under regulations prescribed under  
17 this chapter.

18       (2) The Secretary of Transportation may require any of the following per-  
19 sons to file a registration statement with the Secretary under this sub-  
20 section:

21           (A) a person transporting or causing to be transported hazardous  
22 material in commerce and not required to file a registration statement  
23 under paragraph (1) of this subsection.

24           (B) a person manufacturing, fabricating, marking, maintaining, re-  
25 conditioning, repairing, or testing a package or container the person  
26 represents, marks, certifies, or sells for use in transporting in com-  
27 merce hazardous material the Secretary designates.

28       (3) A person required to file a registration statement under this sub-  
29 section may transport or cause to be transported, or manufacture, fabricate,  
30 mark, maintain, recondition, repair, or test a package or container for use  
31 in transporting, hazardous material, only if the person has a statement on  
32 file as required by this subsection.

33       (b) FORM, CONTENTS, AND LIMITATION ON FILINGS.—(1) A registration  
34 statement under subsection (a) of this section shall be in the form and con-  
35 tain information the Secretary of Transportation requires by regulation. The  
36 Secretary may use existing forms of the Department of Transportation and  
37 the Environmental Protection Agency to carry out this subsection. The  
38 statement shall include—

39           (A) the name and principal place of business of the registrant;

40           (B) a description of each activity the registrant carries out for which  
41 filing a statement under subsection (a) of this section is required; and

(C) each State in which the person carries out the activity.

(2) A person carrying out more than one activity, or an activity at more than one location, for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

(c) FILING DEADLINES AND AMENDMENTS.—(1) Each person required to file a registration statement under subsection (a) of this section must file the first statement not later than March 31, 1992. The Secretary of Transportation may extend that date to September 30, 1992, for activities referred to in subsection (a)(1) of this section. A person shall renew the statement periodically consistent with regulations the Secretary prescribes, but not more than once each year and not less than once every 5 years.

(2) The Secretary of Transportation shall decide by regulation when and under what circumstances a registration statement must be amended and the procedures to follow in amending the statement.

(d) SIMPLIFYING THE REGISTRATION PROCESS.—The Secretary of Transportation may take necessary action to simplify the registration process under subsections (a)–(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) COOPERATION WITH ADMINISTRATOR.—The Administrator of the Environmental Protection Agency shall assist the Secretary of Transportation in carrying out subsections (a)–(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)–(g)(1) and (h).

(f) AVAILABILITY OF STATEMENTS.—The Secretary of Transportation shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(f) of title 5 or otherwise protected by law from disclosure to the public.

(g) FEES.—(1) The Secretary of Transportation may establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2)(A) In addition to a fee established under paragraph (1) of this subsection, the Secretary of Transportation shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least \$250 but not more than \$5,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

- 1 (i) gross revenue from transporting hazardous material.
- 2 (ii) the type of hazardous material transported or caused to be trans-  
3 ported.
- 4 (iii) the amount of hazardous material transported or caused to be  
5 transported.
- 6 (iv) the number of shipments of hazardous material.
- 7 (v) the number of activities that the person carries out for which fil-  
8 ing a registration statement is required under this section.
- 9 (vi) the threat to property, individuals, and the environment from an  
10 accident or incident involving the hazardous material transported or  
11 caused to be transported.
- 12 (vii) the percentage of gross revenue derived from transporting haz-  
13 ardous material.
- 14 (viii) the amount to be made available to carry out sections 5107(e),  
15 5108(g)(2), 5115, and 5116 of this title.
- 16 (ix) other factors the Secretary considers appropriate.

17 (B) The Secretary of Transportation shall adjust the amount being col-  
18 lected under this paragraph to reflect any unexpended balance in the ac-  
19 count established under section 5116(i) of this title. However, the Secretary  
20 is not required to refund any fee collected under this paragraph.

21 (C) The Secretary of Transportation shall transfer to the Secretary of the  
22 Treasury amounts the Secretary of Transportation collects under this para-  
23 graph for deposit in the account the Secretary of the Treasury establishes  
24 under section 5116(i) of this title.

25 (h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Sec-  
26 retary of Transportation may prescribe regulations requiring a person re-  
27 quired to file a registration statement under subsection (a) of this section  
28 to maintain proof of the filing and payment of fees imposed under sub-  
29 section (g) of this section.

30 (i) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not  
31 apply to an activity of the Secretary of Transportation under subsections  
32 (a)–(g)(1) and (h) of this section.

33 (2)(A) This section does not apply to an employee of a hazmat employer.

34 (B) Subsections (a)–(h) of this section do not apply to a department,  
35 agency, or instrumentality of the United States Government, an authority  
36 of a State or political subdivision of a State, or an employee of a depart-  
37 ment, agency, instrumentality, or authority carrying out official duties.

### 38 **§ 5109. Motor carrier safety permits**

39 (a) REQUIREMENT.—A motor carrier may transport or cause to be trans-  
40 ported by motor vehicle in commerce hazardous material only if the carrier  
41 holds a safety permit the Secretary of Transportation issues under this sec-

tion authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able—

(1) to provide the transportation to be authorized by the permit;

(2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and

(3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.

(b) APPLICABLE TRANSPORTATION.—The Secretary shall prescribe by regulation the hazardous material and amounts of hazardous material to which this section applies. However, this section shall apply at least to transportation by a motor carrier, in amounts the Secretary establishes, of—

(1) a class A or B explosive;

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

(c) APPLICATIONS.—A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this section. The Secretary may approve any part of the application or deny the application. The application shall be under oath and contain information the Secretary requires by regulation.

(d) AMENDMENTS, SUSPENSIONS, AND REVOCATIONS.—(1) After notice and an opportunity for a hearing, the Secretary may amend, suspend, or revoke a safety permit, as provided by procedures prescribed under subsection (e) of this section, when the Secretary decides the motor carrier is not complying with a requirement of this chapter, a regulation prescribed under this chapter, or an applicable United States motor carrier safety law or regulation or minimum financial responsibility law or regulation.

(2) If the Secretary decides an imminent hazard exists, the Secretary may amend, suspend, or revoke a permit before scheduling a hearing.

(e) PROCEDURES.—The Secretary shall prescribe by regulation—

(1) application procedures, including form, content, and fees necessary to recover the complete cost of carrying out this section;

(2) standards for deciding the duration, terms, and limitations of a safety permit;

(3) procedures to amend, suspend, or revoke a permit; and

1 (4) other procedures the Secretary considers appropriate to carry out  
2 this section.

3 (f) SHIPPER RESPONSIBILITY.—A person offering hazardous material for  
4 motor vehicle transportation in commerce may offer the material to a motor  
5 carrier only if the carrier has a safety permit issued under this section au-  
6 thorizing the transportation.

7 (g) CONDITIONS.—A motor carrier may provide transportation under a  
8 safety permit issued under this section only if the carrier complies with con-  
9 ditions the Secretary finds are required to protect public safety.

10 (h) REGULATIONS.—The Secretary shall prescribe regulations necessary  
11 to carry out this section not later than November 16, 1991.

12 **§5110. Shipping papers and disclosure**

13 (a) PROVIDING SHIPPING PAPERS.—Each person offering for transpor-  
14 tation in commerce hazardous material to which the shipping paper require-  
15 ments of the Secretary of Transportation apply shall provide to the carrier  
16 providing the transportation a shipping paper that makes the disclosures the  
17 Secretary prescribes under subsection (b) of this section.

18 (b) CONSIDERATIONS AND REQUIREMENTS.—In carrying out subsection  
19 (a) of this section, the Secretary shall consider and may require—

20 (1) a description of the hazardous material, including the proper  
21 shipping name;

22 (2) the hazard class of the hazardous material;

23 (3) the identification number (UN/NA) of the hazardous material;

24 (4) immediate first action emergency response information or a way  
25 for appropriate reference to the information (that must be available im-  
26 mediately); and

27 (5) a telephone number for obtaining more specific handling and  
28 mitigation information about the hazardous material at any time dur-  
29 ing which the material is transported.

30 (c) KEEPING SHIPPING PAPERS ON THE VEHICLE.—(1) A motor carrier,  
31 and the person offering the hazardous material for transportation if a pri-  
32 vate motor carrier, shall keep the shipping paper on the vehicle transporting  
33 the material.

34 (2) Except as provided in paragraph (1) of this subsection, the shipping  
35 paper shall be kept in a location the Secretary specifies in a motor vehicle,  
36 train, vessel, aircraft, or facility until—

37 (A) the hazardous material no longer is in transportation; or

38 (B) the documents are made available to a representative of a de-  
39 partment, agency, or instrumentality of the United States Government  
40 or a State or local authority responding to an accident or incident in-  
41 volving the motor vehicle, train, vessel, aircraft, or facility.

(d) DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.—When an incident involving hazardous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

**§5111. Rail tank cars**

A rail tank car built before January 1, 1971, may be used to transport hazardous material in commerce only if the air brake equipment support attachments of the car comply with the standards for attachments contained in sections 179.100–16 and 179.200–19 of title 49, Code of Federal Regulations, in effect on November 16, 1990.

**§5112. Highway routing of hazardous material**

(a) APPLICATION.—(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. However, the Secretary of Transportation by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this title, each State and Indian tribe may establish, maintain, and enforce—

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.—(1) The Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include—

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

1 (C) a requirement that, in establishing a highway routing designa-  
 2 tion, limitation, or requirement, a State or Indian tribe consult with  
 3 appropriate State, local, and tribal officials having jurisdiction over  
 4 areas of the United States not subject to the jurisdiction of that State  
 5 or tribe establishing the designation, limitation, or requirement and  
 6 with affected industries;

7 (D) a requirement that a highway routing designation, limitation, or  
 8 requirement of a State or Indian tribe shall ensure through highway  
 9 routing for the transportation of hazardous material between adjacent  
 10 areas;

11 (E) a requirement that a highway routing designation, limitation, or  
 12 requirement of one State or Indian tribe affecting the transportation  
 13 of hazardous material in another State or tribe may be established,  
 14 maintained, and enforced by the State or tribe establishing the designa-  
 15 tion, limitation, or requirement only if—

16 (i) the designation, limitation, or requirement is agreed to by  
 17 the other State or tribe within a reasonable period or is approved  
 18 by the Secretary under subsection (d) of this section; and

19 (ii) the designation, limitation, or requirement is not an unrea-  
 20 sonable burden on commerce;

21 (F) a requirement that establishing a highway routing designation,  
 22 limitation, or requirement of a State or Indian tribe be completed in  
 23 a timely way;

24 (G) a requirement that a highway routing designation, limitation, or  
 25 requirement of a State or Indian tribe provide reasonable routes for  
 26 motor vehicles transporting hazardous material to reach terminals, fa-  
 27 cilities for food, fuel, repairs, and rest, and places to load and unload  
 28 hazardous material;

29 (H) a requirement that a State be responsible—

30 (i) for ensuring that political subdivisions of the State comply  
 31 with standards prescribed under this subsection in establishing,  
 32 maintaining, and enforcing a highway routing designation, limita-  
 33 tion, or requirement; and

34 (ii) for resolving a dispute between political subdivisions; and

35 (I) a requirement that, in carrying out subsection (a) of this section,  
 36 a State or Indian tribe shall consider—

37 (i) population densities;

38 (ii) the types of highways;

39 (iii) the types and amounts of hazardous material;

40 (iv) emergency response capabilities;

41 (v) the results of consulting with affected persons;

- (vi) exposure and other risk factors;
- (vii) terrain considerations;
- (viii) the continuity of routes;
- (ix) alternative routes;
- (x) the effects on commerce;
- (xi) delays in transportation; and
- (xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) LIST OF ROUTE DESIGNATIONS.—In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) DISPUTE RESOLUTION.—(1) The Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3)(A) After a petition is filed under this subsection, a civil action about the subject matter of the dispute may be brought in a court only after the earlier of—

- (i) the day the Secretary issues a final decision; or
- (ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision in an appropriate district court of the United States not later than 89 days after the day the decision becomes final.

(e) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title or section 127 of title 23.

(f) EXISTING RADIOACTIVE MATERIAL ROUTING REGULATIONS.—The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and



may not be transported by motor vehicles, and limitations and requirements related to the routing, that were in effect on November 16, 1990.

**§5113. Unsatisfactory safety rating**

(a) PROHIBITED TRANSPORTATION.—A motor carrier receiving an unsatisfactory safety rating from the Secretary of Transportation has 45 days to improve the rating to conditional or satisfactory. Beginning on the 46th day and until the motor carrier receives a conditional or satisfactory rating, a motor carrier not having received a conditional or satisfactory rating during the 45-day period may not operate a commercial motor vehicle (as defined in section 31132 of this title)—

(1) to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under this chapter; or

(2) to transport more than 15 individuals.

(b) RATING REVIEW.—The Secretary shall review the factors that resulted in a motor carrier receiving an unsatisfactory rating not later than 30 days after the motor carrier requests a review.

(c) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use a motor carrier that has an unsatisfactory rating from the Secretary—

(1) to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under this chapter; or

(2) to transport more than 15 individuals.

(d) PUBLIC AVAILABILITY AND UPDATING OF RATINGS.—The Secretary, in consultation with the Interstate Commerce Commission, shall prescribe regulations amending the motor carrier safety regulations in subchapter B of chapter III of title 49, Code of Federal Regulations, to establish a system to make readily available to the public, and update periodically, the safety ratings of motor carriers that have unsatisfactory ratings from the Secretary.

**§5114. Air transportation of ionizing radiation material**

(a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing radiation spontaneously may be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation.

(b) PROCEDURES.—The Secretary of Transportation shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) NONAPPLICATION.—This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

**§5115. Training curriculum for the public sector**

(a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992, in coordination with the Director of the Federal Emergency Management Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director of the National Institute of Environmental Health Sciences, and using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall develop and update periodically a curriculum consisting of a list of courses necessary to train public sector emergency response and preparedness teams. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS.—The curriculum developed under subsection (a) of this section—

(1) shall include—

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed under other United States Government grant programs, including those developed with grants made under section 126 of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

1 (2) may include recommendations on material appropriate for use in  
 2 a recommended basic course described in clause (1)(B) of this sub-  
 3 section.

4 (c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A rec-  
 5 ommended basic course described in subsection (b)(1)(B) of this section  
 6 shall provide the training necessary for public sector employees to comply  
 7 with—

8 (1) regulations related to hazardous waste operations and emergency  
 9 response contained in part 1910 of title 29, Code of Federal Regula-  
 10 tions, prescribed by the Secretary of Labor;

11 (2) regulations related to worker protection standards for hazardous  
 12 waste operations contained in part 311 of title 40, Code of Federal  
 13 Regulations, prescribed by the Administrator; and

14 (3) standards related to emergency response training prescribed by  
 15 the National Fire Protection Association.

16 (d) DISTRIBUTION AND PUBLICATION.—With the national response  
 17 team—

18 (1) the Director of the Federal Emergency Management Agency  
 19 shall distribute the curriculum and any updates to the curriculum to  
 20 the regional response teams and all committees and commissions estab-  
 21 lished under section 301 of the Emergency Planning and Community  
 22 Right-To-Know Act of 1986 (42 U.S.C. 11001); and

23 (2) the Secretary of Transportation may publish a list of programs  
 24 that uses a course developed under this section for training public sec-  
 25 tor employees to respond to an accident or incident involving the trans-  
 26 portation of hazardous material.

27 **§5116. Planning and training grants, monitoring, and re-**  
 28 **view**

29 (a) PLANNING GRANTS.—(1) The Secretary of Transportation shall make  
 30 grants to States—

31 (A) to develop, improve, and carry out emergency plans under the  
 32 Emergency Planning and Community Right-To-Know Act of 1986 (42  
 33 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazard-  
 34 ous material in a State and between States; and

35 (B) to decide on the need for a regional hazardous material emer-  
 36 gency response team.

37 (2) The Secretary of Transportation may make a grant to a State under  
 38 paragraph (1) of this subsection in a fiscal year only if the State—

39 (A) certifies that the total amount the State expends (except  
 40 amounts of the United States Government) to develop, improve, and

1 carry out emergency plans under the Act will at least equal the average  
 2 level of expenditure for the last 2 fiscal years; and

3 (B) agrees to make available at least 75 percent of the amount of  
 4 the grant under paragraph (1) of this subsection in the fiscal year to  
 5 local emergency planning committees established under section 301(c)  
 6 of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the  
 7 Act.

8 (b) TRAINING GRANTS.—(1) The Secretary of Transportation shall make  
 9 grants to States and Indian tribes to train public sector employees to re-  
 10 spond to accidents and incidents involving hazardous material.

11 (2) The Secretary of Transportation may make a grant under paragraph  
 12 (1) of this subsection in a fiscal year—

13 (A) to a State or Indian tribe only if the State or tribe certifies that  
 14 the total amount the State or tribe expends (except amounts of the  
 15 Government) to train public sector employees to respond to an accident  
 16 or incident involving hazardous material will at least equal the average  
 17 level of expenditure for the last 2 fiscal years;

18 (B) to a State or Indian tribe only if the State or tribe makes an  
 19 agreement with the Secretary that the State or tribe will use in that  
 20 fiscal year, for training public sector employees to respond to an acci-  
 21 dent or incident involving hazardous material—

22 (i) a course developed or identified under section 5115 of this  
 23 title; or

24 (ii) another course the Secretary decides is consistent with the  
 25 objectives of this section; and

26 (C) to a State only if the State agrees to make available at least 75  
 27 percent of the amount of the grant under paragraph (1) of this sub-  
 28 section in the fiscal year for training public sector employees a political  
 29 subdivision of the State employs or uses.

30 (3) A grant under this subsection may be used—

31 (A) to pay—

32 (i) the tuition costs of public sector employees being trained;

33 (ii) travel expenses of those employees to and from the training  
 34 facility;

35 (iii) room and board of those employees when at the training  
 36 facility; and

37 (iv) travel expenses of individuals providing the training;

38 (B) by the State, political subdivision, or Indian tribe to provide the  
 39 training; and

(C) to make an agreement the Secretary of Transportation approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on-site observation of the training each year.

(4) The Secretary of Transportation shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.—The Secretary of Transportation may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary of Transportation. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non-Government share under this subsection.

(f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the National Institute of Envi-

1     ronmental Health Sciences, the Director of the Federal Emergency Manage-  
 2     ment Agency shall monitor public sector emergency response planning and  
 3     training for an accident or incident involving hazardous material. Consider-  
 4     ing the results of the monitoring, the Secretaries, Administrator, and Direc-  
 5     tors each shall provide technical assistance to a State, political subdivision  
 6     of a State, or Indian tribe for carrying out emergency response training and  
 7     planning for an accident or incident involving hazardous material and shall  
 8     coordinate the assistance using the existing coordinating mechanisms of the  
 9     national response team and, for radioactive material, the Federal Radiologi-  
 10    cal Preparedness Coordinating Committee.

11    (g) DELEGATION OF AUTHORITY.—To minimize administrative costs and  
 12    to coordinate Government grant programs for emergency response training  
 13    and planning, the Secretary of Transportation may delegate to the Directors  
 14    of the Federal Emergency Management Agency and National Institute of  
 15    Environmental Health Sciences, Chairman of the Nuclear Regulatory Com-  
 16    mission, Administrator of the Environmental Protection Agency, and Sec-  
 17    retaries of Labor and Energy any of the following:

- 18       (1) authority to receive applications for grants under this section.
- 19       (2) authority to review applications for technical compliance with this  
 20       section.
- 21       (3) authority to review applications to recommend approval or dis-  
 22       approval.
- 23       (4) any other ministerial duty associated with grants under this sec-  
 24       tion.

25    (h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Sec-  
 26    retaries of Transportation, Labor, and Energy, Directors of the Federal  
 27    Emergency Management Agency and National Institute of Environmental  
 28    Health Sciences, Chairman of the Nuclear Regulatory Commission, and Ad-  
 29    ministrator of the Environmental Protection Agency shall review periodi-  
 30    cally, with the head of each department, agency, or instrumentality of the  
 31    Government, all emergency response and preparedness training programs of  
 32    that department, agency, or instrumentality to minimize duplication of ef-  
 33    fort and expense of the department, agency, or instrumentality in carrying  
 34    out the programs and shall take necessary action to minimize duplication.

35    (i) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Sec-  
 36    retary of the Treasury shall establish an account in the Treasury into which  
 37    the Secretary of the Treasury shall deposit amounts the Secretary of Trans-  
 38    portation collects under section 5108(g)(2)(A) of this title and transfers to  
 39    the Secretary of the Treasury under section 5108(g)(2)(C) of this title.  
 40    Without further appropriation, amounts in the account are available—

1 (1) to make grants under this section and section 5107(e) of this  
2 title;

3 (2) to monitor and provide technical assistance under subsection (f)  
4 of this section; and

5 (3) to pay administrative costs of carrying out this section and sec-  
6 tions 5107(e), 5108(g)(2), and 5115 of this title, except that not more  
7 than 10 percent of the amounts made available from the account in a  
8 fiscal year may be used to pay those costs.

9 **§5117. Exemptions and exclusions**

10 (a) AUTHORITY TO EXEMPT.—(1) As provided under procedures pre-  
11 scribed by regulation, the Secretary of Transportation may issue an exemp-  
12 tion from this chapter or a regulation prescribed under section 5103(b),  
13 5104, 5110, or 5112 of this title to a person transporting, or causing to  
14 be transported, hazardous material in a way that achieves a safety level—

15 (A) at least equal to the safety level required under this chapter; or

16 (B) consistent with the public interest and this chapter, if a required  
17 safety level does not exist.

18 (2) An exemption under this subsection is effective for not more than 2  
19 years and may be renewed on application to the Secretary.

20 (b) APPLICATIONS.—When applying for an exemption or renewal of an  
21 exemption under this section, the person must provide a safety analysis pre-  
22 scribed by the Secretary that justifies the exemption. The Secretary shall  
23 publish in the Federal Register notice that an application for an exemption  
24 has been filed and shall give the public an opportunity to inspect the safety  
25 analysis and comment on the application. This subsection does not require  
26 the release of information protected by law from public disclosure.

27 (c) EXCLUSIONS.—(1) The Secretary shall exclude, in any part, from this  
28 chapter and regulations prescribed under this chapter—

29 (A) a public vessel (as defined in section 2101 of title 46);

30 (B) a vessel exempted under section 3702 of title 46 from chapter  
31 37 of title 46; and

32 (C) a vessel to the extent it is regulated under the Ports and Water-  
33 ways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

34 (2) This chapter and regulations prescribed under this chapter do not  
35 prohibit—

36 (A) or regulate transportation of a firearm (as defined in section 232  
37 of title 18), or ammunition for a firearm, by an individual for personal  
38 use; or

39 (B) transportation of a firearm or ammunition in commerce.

(d) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, an exemption or renewal granted under this section is the only way a person subject to this chapter may be exempt from this chapter.

**§ 5118. Inspectors**

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain the employment of 30 hazardous material safety inspectors more than the total number of safety inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration.

(b) ALLOCATION TO PROMOTE SAFETY IN TRANSPORTING RADIOACTIVE MATERIAL.—(1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on promoting safety in transporting radioactive material, as defined by the Secretary, including inspecting—

(A) at the place of origin, shipments of high-level radioactive waste or nuclear spent material (as those terms are defined in section 5105(a) of this title); and

(B) to the maximum extent practicable shipments of radioactive material that are not high-level radioactive waste or nuclear spent material.

(2) In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.

(3) Those 10 additional inspectors shall be allocated as follows:

(A) one to the Research and Special Programs Administration.

(B) 3 to the Federal Railroad Administration.

(C) 3 to the Federal Highway Administration.

(D) the other 3 among the administrations referred to in clauses (A)–(C) of this paragraph as the Secretary decides.

(c) ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)–(C) of this section.

**§ 5119. Uniform forms and procedures**

(a) WORKING GROUP.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures. The purposes of the working group are—



(1) to establish uniform forms and procedures for a State—

(A) to register persons that transport or cause to be transported hazardous material by motor vehicle in the State; and

(B) to allow the transportation of hazardous material in the State; and

(2) to decide whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business.

(b) CONSULTATION AND REPORTING.—The working group—

(1) shall consult with persons subject to registration and permit requirements described in subsection (a) of this section; and

(2) not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a final report that contains—

(A) a detailed statement of its findings and conclusions; and

(B) its joint recommendations on the matters referred to in subsection (a) of this section.

(c) REGULATIONS ON RECOMMENDATIONS.—(1) The Secretary shall prescribe regulations to carry out the recommendations contained in the report submitted under subsection (b) of this section with which the Secretary agrees. The regulations shall be prescribed by the later of the last day of the 3-year period beginning on the date the working group submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report. A regulation prescribed under this subsection may not define or limit the amount of a fee a State may impose or collect.

(2) A regulation prescribed under this subsection takes effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation.

(3) In consultation with the working group, the Secretary shall develop a procedure to eliminate differences in how States carry out a regulation prescribed under this subsection.

(d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.

**§ 5120. International uniformity of standards and requirements**

(a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary of Transportation

1 shall participate in international forums that establish or recommend man-  
 2 datory standards and requirements for transporting hazardous material in  
 3 international commerce.

4 (b) CONSULTATION.—The Secretary of Transportation may consult with  
 5 interested authorities to ensure that, to the extent practicable, regulations  
 6 the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of  
 7 this title are consistent with standards related to transporting hazardous  
 8 material that international authorities adopt.

9 (c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIRE-  
 10 MENTS.—This section—

11 (1) does not require the Secretary of Transportation to prescribe a  
 12 standard identical to a standard adopted by an international authority  
 13 if the Secretary decides the standard is unnecessary or unsafe; and

14 (2) does not prohibit the Secretary from prescribing a safety require-  
 15 ment more stringent than a requirement included in a standard adopt-  
 16 ed by an international authority if the Secretary decides the require-  
 17 ment is necessary in the public interest.

18 **§5121. Administrative**

19 (a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of  
 20 Transportation may investigate, make reports, issue subpoenas, conduct  
 21 hearings, require the production of records and property, take depositions,  
 22 and conduct research, development, demonstration, and training activities.  
 23 After notice and an opportunity for a hearing, the Secretary may issue an  
 24 order requiring compliance with this chapter or a regulation prescribed  
 25 under this chapter.

26 (b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this  
 27 chapter shall—

28 (1) maintain records, make reports, and provide information the Sec-  
 29 retary by regulation or order requires; and

30 (2) make the records, reports, and information available when the  
 31 Secretary requests.

32 (c) INSPECTION.—(1) The Secretary may authorize an officer, employee,  
 33 or agent to inspect, at a reasonable time and in a reasonable way, records  
 34 and property related to—

35 (A) manufacturing, fabricating, marking, maintaining, recondition-  
 36 ing, repairing, testing, or distributing a package or container for use  
 37 by a person in transporting hazardous material in commerce; or

38 (B) the transportation of hazardous material in commerce.

39 (2) An officer, employee, or agent under this subsection shall display  
 40 proper credentials when requested.

(d) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and fire-fighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(e) ANNUAL REPORT.—The Secretary shall submit to the President, for submission to Congress, not later than June 15th of each year, a report about the transportation of hazardous material during the prior calendar year. The report shall include—

(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

(2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;

(3) a summary of the basis for each exemption;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with regulations;

(5) a summary of outstanding problems in carrying out this chapter in order of priority; and

(6) recommendations for appropriate legislation.

## **§ 5122. Enforcement**

(a) GENERAL.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.

(b) IMMINENT HAZARDS.—(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States—

1 (A) to suspend or restrict the transportation of the hazardous mate-  
 2 rial responsible for the hazard; or

3 (B) to eliminate or ameliorate the hazard.

4 (2) On request of the Secretary, the Attorney General shall bring an ac-  
 5 tion under paragraph (1) of this subsection.

6 **§5123. Civil penalty**

7 (a) PENALTY.—(1) A person that knowingly violates this chapter or a  
 8 regulation prescribed or order issued under this chapter is liable to the  
 9 United States Government for a civil penalty of at least \$250 but not more  
 10 than \$25,000 for each violation. A person acts knowingly when—

11 (A) the person has actual knowledge of the facts giving rise to the  
 12 violation; or

13 (B) a reasonable person acting in the circumstances and exercising  
 14 reasonable care would have that knowledge.

15 (2) A separate violation occurs for each day the violation, committed by  
 16 a person that transports or causes to be transported hazardous material,  
 17 continues.

18 (b) HEARING REQUIREMENT.—The Secretary of Transportation may find  
 19 that a person has violated this chapter or a regulation prescribed under this  
 20 chapter only after notice and an opportunity for a hearing. The Secretary  
 21 shall impose a penalty under this section by giving the person written notice  
 22 of the amount of the penalty.

23 (c) PENALTY CONSIDERATIONS.—In determining the amount of a civil  
 24 penalty under this section, the Secretary shall consider—

25 (1) the nature, circumstances, extent, and gravity of the violation;

26 (2) with respect to the violator, the degree of culpability, any history  
 27 of prior violations, the ability to pay, and any effect on the ability to  
 28 continue to do business; and

29 (3) other matters that justice requires.

30 (d) CIVIL ACTIONS TO COLLECT.—The Attorney General may bring a  
 31 civil action in an appropriate district court of the United States to collect  
 32 a civil penalty under this section.

33 (e) COMPROMISE.—The Secretary may compromise the amount of a civil  
 34 penalty imposed under this section before referral to the Attorney General.

35 (f) SETOFF.—The Government may deduct the amount of a civil penalty  
 36 imposed or compromised under this section from amounts it owes the person  
 37 liable for the penalty.

38 (g) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this  
 39 section shall be deposited in the Treasury as miscellaneous receipts.

**§ 5124. Criminal penalty**

A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

**§ 5125. Preemption**

(a) GENERAL.—Except as provided in subsections (b), (c), and (e) of this section, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

(b) SUBSTANTIVE DIFFERENCES.—(1) Except as provided in subsection (c) of this section, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(2) If the Secretary of Transportation prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register

the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary prescribes after November 16, 1990. However, the effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5112(b) of this title, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

(2)(A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this title does not have to comply with section 5112(b)(1)(B), (C), and (F).

(B) This subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title.

(d) DECISIONS ON PREEMPTION.—(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section. The Secretary shall publish notice of the application in the Federal Register. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court of competent jurisdiction instead of applying to the Secretary under paragraph (1) of this subsection.

(e) WAIVER OF PREEMPTION.—A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section. Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(f) JUDICIAL REVIEW.—A party to a proceeding under subsection (d) or (e) of this section may bring a civil action in an appropriate district court of the United States for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.

(g) FEES.—A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

## **§ 5126. Relationship to other laws**

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports or causes to be transported hazardous material, or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container that the person represents, marks, certifies, or sells as qualified for use in transporting hazardous material must comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.—This chapter does not apply to—

(1) a pipeline subject to regulation under chapter 601 of this title;

or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.

#### **§ 5127. Authorization of appropriations**

(a) GENERAL.—Not more than \$18,000,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1993, to carry out this chapter (except sections 5107(e), 5108(g)(2), 5115, 5116, and 5119).

(b) HAZMAT EMPLOYEE TRAINING.—Not more than \$250,000 is available to the Director of the National Institute of Environmental Health Sciences from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5107(e) of this title.

(c) TRAINING CURRICULUM.—(1) Not more than \$1,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5115 of this title.

(2) The Secretary of Transportation may transfer to the Director of the Federal Emergency Management Agency from amounts available under this subsection amounts necessary to carry out section 5115(d)(1) of this title.

(d) PLANNING AND TRAINING.—(1) Not more than \$5,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(a) of this title.

(2) Not more than \$7,800,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(b) of this title.

(3) Not more than the following amounts are available from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(f) of this title:

(A) \$750,000 each to the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the Federal Emergency Management Agency.

(B) \$200,000 to the Director of the National Institute of Environmental Health Sciences.

(e) UNIFORM FORMS AND PROCEDURES.—Not more than \$400,000 may be appropriated to the Secretary of Transportation for each of the fiscal year ending September 30, 1993, to carry out section 5119 of this title.



1 (f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may  
 2 credit to any appropriation to carry out this chapter an amount received  
 3 from a State, Indian tribe, or other public authority or private entity for  
 4 expenses the Secretary incurs in providing training to the State, authority,  
 5 or entity.

6 (g) AVAILABILITY OF AMOUNTS.—Amounts available under subsections  
 7 (c)–(e) of this section remain available until expended.

8 **CHAPTER 53—MASS TRANSPORTATION**

Sec.

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9 **§ 5301. Policies, findings, and purposes**

10 (a) DEVELOPMENT OF TRANSPORTATION SYSTEMS.—It is in the interest  
 11 of the United States to encourage and promote the development of transpor-  
 12 tation systems that embrace various modes of transportation and efficiently  
 13 maximize mobility of individuals and goods in and through urbanized areas  
 14 and minimize transportation-related fuel consumption and air pollution.

15 (b) GENERAL FINDINGS.—Congress finds that—

1 (1) more than 70 percent of the population of the United States is  
2 located in rapidly expanding urban areas that generally cross the  
3 boundary lines of local jurisdictions and often extend into at least 2  
4 States;

5 (2) the welfare and vitality of urban areas, the satisfactory move-  
6 ment of people and goods within those areas, and the effectiveness of  
7 programs aided by the United States Government are jeopardized by  
8 deteriorating or inadequate urban transportation service and facilities,  
9 the intensification of traffic congestion, and the lack of coordinated,  
10 comprehensive, and continuing development planning;

11 (3) transportation is the lifeblood of an urbanized society, and the  
12 health and welfare of an urbanized society depend on providing effi-  
13 cient, economical, and convenient transportation in and between urban  
14 areas;

15 (4) for many years the mass transportation industry capably and  
16 profitably satisfied the transportation needs of the urban areas of the  
17 United States but in the early 1970's continuing even minimal mass  
18 transportation service in urban areas was threatened because maintain-  
19 ing that transportation service was financially burdensome;

20 (5) ending that transportation, or the continued increase in its cost  
21 to the user, is undesirable and may affect seriously and adversely the  
22 welfare of a substantial number of lower income individuals;

23 (6) some urban areas were developing preliminary plans for, or car-  
24 rying out, projects in the early 1970's to revitalize their mass transpor-  
25 tation operations;

26 (7) significant mass transportation improvements are necessary to  
27 achieve national goals for improved air quality, energy conservation,  
28 international competitiveness, and mobility for elderly individuals, indi-  
29 viduals with disabilities, and economically disadvantaged individuals in  
30 urban and rural areas of the United States;

31 (8) financial assistance by the Government to develop efficient and  
32 coordinated mass transportation systems is essential to solve the urban  
33 transportation problems referred to in clause (2) of this subsection; and

34 (9) immediate substantial assistance by the Government is needed to  
35 enable mass transportation systems to continue providing vital trans-  
36 portation service.

37 (c) RAPID URBANIZATION AND CONTINUING POPULATION DISPERSAL.—  
38 Rapid urbanization and continuing dispersal of the population and activities  
39 in urban areas have made the ability of all citizens to move quickly and at  
40 a reasonable cost an urgent problem of the Government.

(d) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.—It is the policy of the Government that elderly individuals and individuals with disabilities have the same right as other individuals to use mass transportation service and facilities. Special efforts shall be made in planning and designing mass transportation service and facilities to ensure that mass transportation can be used by elderly individuals and individuals with disabilities. All programs of the Government assisting mass transportation shall carry out this policy.

(e) PRESERVING THE ENVIRONMENT.—It is the policy of the Government that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets when planning, designing, and carrying out an urban mass transportation capital project with assistance from the Government under sections 5309 and 5310 of this title.

(f) GENERAL PURPOSES.—The purposes of this chapter are—

(1) to assist in developing improved mass transportation equipment, facilities, techniques, and methods with the cooperation of public and private mass transportation companies;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development with the cooperation of public and private mass transportation companies;

(3) to assist States and local governments and their authorities in financing areawide urban mass transportation systems that are to be operated by public or private mass transportation companies as decided by local needs;

(4) to provide financial assistance to State and local governments and their authorities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals; and

(5) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its urban mass transportation requirements.

## **§ 5302. Definitions**

(a) GENERAL.—In this chapter—

(1) “capital project” means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in mass transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights of way), relocation assistance, acquiring replacement housing sites, and ac-

1           quiring, constructing, relocating, and rehabilitating replacement  
2           housing;

3           (B) rehabilitating a bus that extends the economic life of a bus  
4           for at least 5 years;

5           (C) remanufacturing a bus that extends the economic life of a  
6           bus for at least 8 years; or

7           (D) overhauling rail rolling stock.

8           (2) “chief executive officer of a State” includes the designee of the  
9           chief executive officer.

10          (3) “emergency regulation” means a regulation—

11           (A) that is effective temporarily before the expiration of the oth-  
12           erwise specified periods of time for public notice and comment  
13           under section 5334(b) of this title; and

14           (B) prescribed by the Secretary of Transportation as the result  
15           of a finding that a delay in the effective date of the regulation—

16               (i) would injure seriously an important public interest;

17               (ii) would frustrate substantially legislative policy and in-  
18               tent; or

19               (iii) would damage seriously a person or class without serv-  
20               ing an important public interest.

21          (4) “fixed guideway” means a mass transportation facility—

22           (A) using and occupying a separate right of way or rail for the  
23           exclusive use of mass transportation and other high occupancy ve-  
24           hicles; or

25           (B) using a fixed catenary system and a right of way usable by  
26           other forms of transportation.

27          (5) “handicapped individual” means an individual who, because of  
28           illness, injury, age, congenital malfunction, or other incapacity or tem-  
29           porary or permanent disability (including an individual who is a wheel-  
30           chair user or has semiambulatory capability), cannot use effectively,  
31           without special facilities, planning, or design, mass transportation serv-  
32           ice or a mass transportation facility.

33          (6) “local governmental authority” includes—

34           (A) a political subdivision of a State;

35           (B) an authority of at least one State or political subdivision of  
36           a State;

37           (C) an Indian tribe; and

38           (D) a public corporation, board, or commission established  
39           under the laws of a State.

40          (7) “mass transportation” means transportation by a conveyance  
41           that provides regular and continuing general or special transportation

to the public, but does not include schoolbus, charter, or sightseeing transportation.

(8) “net property cost” means the part of a project that reasonably cannot be financed from revenues.

(9) “new bus model” means a bus model (including a model using alternative fuel)—

(A) that has not been used in mass transportation in the United States before the date of production of the model; or

(B) used in mass transportation in the United States but being produced with a major change in configuration or components.

(10) “regulation” means any part of a statement of general or particular applicability of the Secretary of Transportation designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

(11) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(12) “urban area” means an area that includes a municipality or other built-up place that the Secretary of Transportation, after considering local patterns and trends of urban growth, decides is appropriate for a local mass transportation system to serve individuals in the locality.

(13) “urbanized area” means an area—

(A) encompassing at least an urbanized area within a State that the Secretary of Commerce designates; and

(B) designated an urbanized area within boundaries fixed by State and local officials and approved by the Secretary of Transportation.

(b) AUTHORITY TO MODIFY “HANDICAPPED INDIVIDUAL”.—The Secretary of Transportation by regulation may modify the definition of subsection (a)(5) of this section as it applies to section 5307(d)(1)(D) of this title.

### **§ 5303. Metropolitan planning**

(a) DEVELOPMENT REQUIREMENTS.—To carry out section 5301(a) of this title, metropolitan planning organizations designated under subsection (c) of this section, in cooperation with States, shall develop transportation plans and programs for State urbanized areas. The plans and programs for each area shall provide for developing transportation facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State, metropolitan area, and United States. The development process shall provide for consideration of

1 all modes of transportation and shall be continuing, cooperative, and com-  
2 prehensive to the degree appropriate, based on the complexity of the trans-  
3 portation problems.

4 (b) PLAN AND PROGRAM FACTORS.—In developing plans and programs  
5 under this section and sections 5304–5306 of this title, each metropolitan  
6 planning organization at least shall consider the following factors:

7 (1) preserving existing transportation facilities and, where practical,  
8 ways to meet transportation needs by using existing transportation fa-  
9 cilities more efficiently.

10 (2) the consistency of transportation planning with United States  
11 Government, State, and local energy conservation programs, goals, and  
12 objectives.

13 (3) the need to relieve congestion and prevent congestion from occur-  
14 ring.

15 (4) the likely effect of transportation policy decisions on land use  
16 and development and the consistency of transportation plans and pro-  
17 grams with short- and long-term land use and development plans.

18 (5) programming expenditures on transportation enhancement activi-  
19 ties, as required under section 133 of title 23.

20 (6) the effects of all transportation projects to be undertaken in the  
21 metropolitan area, without regard to whether the projects are publicly  
22 financed.

23 (7) international border crossings and access to ports, airports, inter-  
24 modal transportation facilities, major freight distribution routes, na-  
25 tional parks, recreation areas, monuments and historic sites, and mili-  
26 tary installations.

27 (8) the need for connecting roads in the metropolitan area with  
28 roads outside the area.

29 (9) the transportation needs identified by using the management sys-  
30 tems required by section 303 of title 23.

31 (10) preserving rights of way for constructing future transportation  
32 projects, including identifying—

33 (A) unused rights of way that may be needed for future trans-  
34 portation corridors; and

35 (B) corridors where action is needed most to prevent destruction  
36 or loss.

37 (11) ways to enhance the efficient movement of freight.

38 (12) using life-cycle costs in designing and engineering bridges, tun-  
39 nels, and pavement.

40 (13) the overall social, economic, energy, and environmental effects  
41 of transportation decisions.

1 (14) ways to expand and enhance mass transportation services and  
2 to increase usage of those services.

3 (15) capital investments that will result in increased security in mass  
4 transportation systems.

5 (c) DESIGNATING METROPOLITAN PLANNING ORGANIZATIONS.—(1) To  
6 carry out the planning process required by this section, a metropolitan plan-  
7 ning organization shall be designated for each urbanized area with a popu-  
8 lation of more than 50,000—

9 (A) by agreement of the chief executive officer of a State and units  
10 of general local government representing at least 75 percent of the af-  
11 fected population (including the central city as defined by the Secretary  
12 of Commerce); or

13 (B) under procedures established by State or local law.

14 (2) In a metropolitan area designated as a transportation management  
15 area, the designated metropolitan planning organization, if redesignated  
16 after December 18, 1991, shall include local elected officials, officials of au-  
17 thorities that administer or operate major modes of transportation in the  
18 metropolitan area (including all transportation authorities included in the  
19 organization on June 1, 1991), and appropriate State officials.

20 (3) More than one metropolitan planning organization may be designated  
21 in an urbanized area (as defined by the Secretary of Commerce) only if the  
22 chief executive officer decides that the size and complexity of the urbanized  
23 area make designation of more than one organization appropriate.

24 (4) A designation is effective until—

25 (A) the organization is redesignated under paragraph (3) of this sub-  
26 section; or

27 (B) revoked—

28 (i) by agreement of the chief executive officer and units of gen-  
29 eral local government representing at least 75 percent of the af-  
30 fected population; or

31 (ii) as otherwise provided by State or local procedures.

32 (5)(A) The chief executive officer and units of general local government  
33 representing at least 75 percent of the affected population (including the  
34 central city as defined by the Secretary of Commerce) may redesignate by  
35 agreement a metropolitan planning organization when appropriate to carry  
36 out this section.

37 (B) A metropolitan planning organization shall be redesignated on re-  
38 quest of one or more units of general local government representing at least  
39 25 percent of the affected population (including the central city as defined  
40 by the Secretary of Commerce) in an urbanized area with a population of  
41 more than 5,000,000, but less than 10,000,000 or that is an extreme non-

1 attainment area for ozone or carbon monoxide (as defined in the Clean Air  
2 Act (42 U.S.C. 7401 et seq.)).

3 (C) A metropolitan planning organization shall be redesignated using pro-  
4 cedures established to carry out this paragraph.

5 (6) This subsection does not affect the authority, under State law in ef-  
6 fect on December 18, 1991, of a public authority with multimodal transpor-  
7 tation responsibilities—

8 (A) to develop plans and programs for a metropolitan planning orga-  
9 nization to adopt; and

10 (B) to develop long-range capital plans, coordinate mass transpor-  
11 tation services and projects, and carry out other activities under State  
12 law.

13 (d) METROPOLITAN AREA BOUNDARIES.—To carry out this section, the  
14 metropolitan planning organization and the chief executive officer shall de-  
15 cide by agreement on the boundaries of a metropolitan area. The area shall  
16 cover at least the existing urbanized area and the contiguous area expected  
17 to become urbanized within the 20-year forecast period and may include the  
18 Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area,  
19 as defined by the Secretary of Commerce. An area designated as an non-  
20 attainment area for ozone or carbon monoxide under the Clean Air Act (42  
21 U.S.C. 7401 et seq.) shall include at least the boundaries of the nonattain-  
22 ment area, except as the chief executive officer and metropolitan planning  
23 organization otherwise agree.

24 (e) COORDINATION.—(1) The Secretary of Transportation shall establish  
25 requirements the Secretary considers appropriate to encourage chief execu-  
26 tive officers and metropolitan planning organizations with responsibility for  
27 part of a multi-State metropolitan area to provide coordinated transpor-  
28 tation planning for the entire area.

29 (2) Congress consents to at least 2 States making an agreement, not in  
30 conflict with a law of the United States, for cooperative efforts and mutual  
31 assistance in support of activities authorized under this section related to  
32 interstate areas and localities in the States and establishing authorities the  
33 States consider desirable for making the agreement effective.

34 (3) If more than one metropolitan planning organization has authority in  
35 a metropolitan area or an area designated a nonattainment area for ozone  
36 or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each  
37 organization shall consult with the other organizations designated for the  
38 area and the State to coordinate plans and projects required by this section  
39 and sections 5304–5306 of this title.

40 (f) DEVELOPING LONG-RANGE PLANS.—(1) Each metropolitan planning  
41 organization shall prepare and update periodically, according to a schedule



1 the Secretary of Transportation decides is appropriate, a long-range plan  
 2 for its metropolitan area under the requirements of this section. The plan  
 3 shall be in the form the Secretary considers appropriate and at least shall—

4 (A) identify transportation facilities (including major roadways, mass  
 5 transportation, and multimodal and intermodal facilities) that should  
 6 function as an integrated metropolitan transportation system, empha-  
 7 sizing transportation facilities that serve important United States and  
 8 regional transportation functions;

9 (B) include a financial plan that—

10 (i) demonstrates how the long-range plan can be carried out;

11 (ii) indicates resources from public and private sources reason-  
 12 ably expected to be made available to carry out the plan; and

13 (iii) recommends innovative financing techniques, including  
 14 value capture, tolls, and congestion pricing, to finance needed  
 15 projects and programs;

16 (C) assess capital investment and other measures necessary—

17 (i) to ensure the preservation of the existing metropolitan trans-  
 18 portation system, including requirements for operational improve-  
 19 ments, resurfacing, restoration, and rehabilitation of existing and  
 20 future major roadways, and operations, maintenance, moderniza-  
 21 tion, and rehabilitation of existing and future mass transportation  
 22 facilities; and

23 (ii) to use existing transportation facilities most efficiently to re-  
 24 lieve vehicular congestion and maximize the mobility of individuals  
 25 and goods; and

26 (D) indicate appropriate proposed transportation enhancement ac-  
 27 tivities.

28 (2) When formulating a long-range plan, the metropolitan planning orga-  
 29 nization shall consider the factors described in subsection (e) of this section  
 30 as they are related to a 20-year forecast period.

31 (3) In a metropolitan area that is in a nonattainment area for ozone or  
 32 carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the  
 33 metropolitan planning organization shall coordinate the development of the  
 34 long-range plan with the development of the transportation control measures  
 35 of the State Implementation Plan required by the Act.

36 (4) Before approving a long-range plan, each metropolitan planning orga-  
 37 nization shall provide citizens, affected public agencies, representatives of  
 38 mass transportation authority employees, private providers of transpor-  
 39 tation, and other interested parties with a reasonable opportunity to com-  
 40 ment on the plan in a way the Secretary of Transportation considers appro-  
 41 priate.

(5) A long-range plan shall be—

(A) made readily available for public review; and

(B) submitted for information purposes to the chief executive officer of the State at the time and in the way the Secretary of Transportation establishes.

(g) GRANTS.—Under criteria the Secretary of Transportation establishes, the Secretary may make contracts for, and grants to, States, local governmental authorities, and authorities of the States and governmental authorities, or may make agreements with other departments, agencies, and instrumentalities of the Government, to plan, engineer, design, and evaluate a mass transportation project and for other technical studies, including—

(1) studies related to management, operations, capital requirements, and economic feasibility;

(2) evaluating previously financed projects; and

(3) other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

(h) BALANCED AND COMPREHENSIVE PLANNING.—(1) To the extent practicable, the Secretary of Transportation shall ensure that amounts made available under section 5338(g)(1) of this title to carry out this section and sections 5304–5306 of this title are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(2)(A) The Secretary of Transportation shall apportion 80 percent of the amount made available under section 5338(g)(1) of this title to States in a ratio equal to the population in urbanized areas in each State divided by the total population in urbanized areas in all States, as shown by the latest available decennial census. A State may not receive less than .5 percent of the amount apportioned under this subparagraph.

(B) Amounts apportioned to a State under subparagraph (A) of this paragraph shall be allocated to metropolitan planning organizations in the State designated under this section under a formula—

(i) the State develops in cooperation with the metropolitan planning organizations;

(ii) the Secretary of Transportation approves; and

(iii) that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

(C) A State shall make amounts available promptly to eligible metropolitan planning organizations according to procedures the Secretary of Transportation approves.

(3)(A) The Secretary of Transportation shall apportion 20 percent of the amount made available under section 5338(g)(1) of this title to States to supplement allocations made under paragraph (2)(B) of this subsection for metropolitan planning organizations.

(B) Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under this section and sections 5304–5306 of this title in those areas.

(4) To the maximum extent practicable, the Secretary of Transportation shall ensure that no metropolitan planning organization is allocated less than the amount it received by administrative formula under this section in the fiscal year that ended September 30, 1991. To carry out this subsection, the Secretary may make a proportionate reduction in other amounts made available to carry out section 5338(g)(1) of this title.

(5) Amounts available for an activity under this subsection are for 80 percent of the cost of the activity unless the Secretary of Transportation decides it is in the interests of the Government not to require a State or local match.

(6) An amount apportioned under this subsection—

(A) remains available for 3 years after the fiscal year in which the amount is apportioned, and

(B) that is unobligated at the end of the 3-year period shall be reapportioned among the States for the next fiscal year.

#### **§ 5304. Transportation improvement program**

(a) DEVELOPMENT AND UPDATE.—In cooperation with the State and affected mass transportation operators, a metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area. In developing the program, the organization shall provide citizens, affected public agencies, representatives of transportation authority employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the organization and the chief executive officer of the State.

(b) CONTENTS.—A transportation improvement program for a metropolitan area shall include—

(1) a priority list of projects and parts of projects to be carried out in each 3-year period after the program is adopted; and

(2) a financial plan that—

(A) demonstrates how the program can be carried out;

(B) indicates resources from public and private sources that reasonably are expected to be made available to carry out the plan; and

(C) recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects.

(c) PROJECT SELECTION.—(1) Except as provided in section 5305(d)(1) of this title, the State, in cooperation with the metropolitan planning organization, shall select projects in a metropolitan area that involves United States Government participation. Selection shall comply with the transportation improvement program for the area.

(2) A transportation improvement program for a metropolitan area shall include—

(A) projects within the area that are proposed for financing under this chapter and title 23 and that are consistent with the long-range plan developed under section 5303(f) of this title; and

(B) a project or an identified phase of a project only if full financing reasonably can be anticipated to be available for the project in the period estimated for completion.

(d) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice and an opportunity to comment on the proposed program.

(e) REGULATORY PROCEEDING.—Not later than June 18, 1992, the Secretary of Transportation shall begin a regulatory proceeding to conform review requirements for mass transportation projects under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to comparable requirements under that Act applicable to highway projects. This section and sections 5303, 5305, and 5306 of this title do not affect the applicability of the Act to mass transportation or highway projects. A mass transportation project that has an approved draft Environmental Impact Statement is exempt from complying with requirements under the Act applicable to highway projects.

### **§ 5305. Transportation management areas**

(a) DESIGNATION.—The Secretary of Transportation shall designate as a transportation management area—

(1) each urbanized area with a population of more than 200,000; and

1           (2) any other area, including the Lake Tahoe Basin as defined in  
 2           the Act of December 19, 1980 (Public Law 96-551, 94 Stat. 3233),  
 3           when requested by the chief executive officer and the metropolitan or-  
 4           ganization designated for the area or the affected local officials.

5           (b) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and  
 6           programs in a transportation management area shall be based on a continu-  
 7           ing and comprehensive transportation planning process the metropolitan  
 8           planning organization carries out in cooperation with the State and mass  
 9           transportation operators.

10          (c) CONGESTION MANAGEMENT SYSTEM.—The transportation planning  
 11          process under sections 5303, 5304, and 5306 of this title in a transpor-  
 12          tation management area shall include a congestion management system pro-  
 13          viding for effective management, through travel demand reduction and oper-  
 14          ational management strategies, of new and existing transportation facilities  
 15          eligible for financing under this chapter and title 23. The Secretary shall  
 16          establish a phase-in schedule to comply with sections 5303, 5304, and 5306.

17          (d) PROJECT SELECTION.—(1)(A) In consultation with the State, the  
 18          metropolitan planning organization designated for a transportation manage-  
 19          ment area shall select the projects to be carried out in the area with United  
 20          States Government participation under this chapter or title 23, except  
 21          projects of the National Highway System or under the Bridge and Inter-  
 22          state Maintenance programs.

23          (B) In cooperation with the metropolitan planning organization des-  
 24          ignated for a transportation management area, the State shall select the  
 25          projects to be carried out in the area of the National Highway System or  
 26          under the Bridge and Interstate Maintenance programs.

27          (2)(A) A selection under this subsection must comply with the transpor-  
 28          tation improvement program for the area.

29          (B) A selection under paragraph (1)(A) of this subsection must comply  
 30          with priorities established in the program.

31          (e) CERTIFICATION.—(1) At least once every 3 years, the Secretary shall  
 32          ensure and certify that each metropolitan planning organization in each  
 33          transportation management area is carrying out its responsibilities under  
 34          applicable laws of the United States. The Secretary may make the certifi-  
 35          cation only if the organization is complying with section 134 of title 23 and  
 36          other applicable requirements of laws of the United States and the organiza-  
 37          tion and chief executive officer have approved a transportation improvement  
 38          program for the area.

39          (2) If the Secretary does not certify before October 1, 1993, that a met-  
 40          ropolitan planning organization is carrying out its responsibilities, the Sec-  
 41          retary may withhold any part of the apportionment under section 104(b)(3)

of title 23 attributed to the relevant metropolitan area under section 133(d)(3) of title 23 and capital amounts apportioned under section 5336 of this title. If an organization remains uncertified for more than 2 consecutive years after September 30, 1994, 20 percent of that apportionment and capital amounts shall be withheld. The withheld apportionments shall be restored when the Secretary certifies the organization.

(3) The Secretary may not withhold certification based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under section 5306(a) of this title for deciding the feasibility of private enterprise participation.

(f) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—Government amounts may be made available for a mass transportation project resulting in a significant increase in carrying capacity for single occupant vehicles in a transportation management area classified as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) only if the project is part of an approved congestion management system.

(g) AREAS NOT DESIGNATED TRANSPORTATION MANAGEMENT AREAS.—(1) The Secretary may provide for the development of abbreviated metropolitan transportation plans and programs the Secretary decides are appropriate to carry out this section and sections 5303, 5304, and 5306 of this title for metropolitan areas not designated transportation management areas under this section. The Secretary shall consider the complexity of transportation problems in those areas, including transportation-related air quality problems.

(2) The Secretary may not provide an abbreviated plan or program for a metropolitan area in a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

**§ 5306. Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations**

(a) PRIVATE ENTERPRISE PARTICIPATION.—A plan or program required by section 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible the participation of private enterprise. If equipment or a facility already being used in an urban area is to be acquired under this chapter, the program shall provide that it be improved so that it will better serve the transportation needs of the area.

(b) RELATIONSHIP TO OTHER LIMITATIONS.—Sections 5303–5305 of this title do not authorize—

(1) a metropolitan planning organization to impose a legal requirement on a transportation facility, provider, or project not eligible under this chapter or title 23; and

(2) intervention in the management of a transportation authority.

**§ 5307. Block grants**

(a) DEFINITIONS.—In this section—

(1) “associated capital maintenance items” means equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.

(2) “designated recipient” means—

(A) a person designated, consistent with the planning process under sections 5303–5306 of this title, by the chief executive officer of a State, responsible local officials, and publicly owned operators of mass transportation to receive and apportion amounts under section 5336 of this title that are attributable to transportation management areas established under section 5305(a) of this title;

(B) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing mass transportation; or

(C) a recipient designated under section 5(b)(1) of the Federal Transit Act not later than January 5, 1983.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants under this section for capital projects and to finance the planning, improvement, and operating costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment.

(2) In a transportation management area designated under section 5305(a) of this title, amounts that cannot be used to pay operating expenses under this section also are available for a highway project if—

(A) that use is approved by the metropolitan planning organization under section 5303 of this title after appropriate notice and an opportunity for comment and appeal is provided to affected mass transportation providers; and

(B) the Secretary decides the amounts are not needed for investment required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(3) A grant for a capital project under this section also is available to finance the leasing of equipment and facilities for use in mass transpor-

tation, subject to regulations the Secretary prescribes limiting the grant to leasing arrangements that are more cost effective than acquisition or construction.

(4) A project for the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used, is a capital project for an associated capital maintenance item under this section.

(5) Amounts under this section are available for a highway project under title 23 only if amounts used for the State or local share of the project are eligible to finance either a highway or mass transportation project.

(c) PUBLIC PARTICIPATION REQUIREMENTS.—Each recipient of a grant shall—

(1) make available to the public information on amounts available to the recipient under this section and the program of projects the recipient proposes to undertake;

(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

(3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

(4) provide an opportunity for a public hearing in which to obtain the views of citizens on the proposed program of projects;

(5) ensure that the proposed program of projects provides for the coordination of mass transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

(6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

(7) make the final program of projects available to the public.

(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a chief executive officer of a State under this section)—



1 (A) has or will have the legal, financial, and technical capacity  
2 to carry out the program;

3 (B) has or will have satisfactory continuing control over the use  
4 of equipment and facilities;

5 (C) will maintain equipment and facilities;

6 (D) will ensure that elderly and handicapped individuals, or an  
7 individual presenting a medicare card issued to that individual  
8 under title II or XVIII of the Social Security Act (42 U.S.C. 401  
9 et seq., 1395 et seq.), will be charged during non-peak hours for  
10 transportation using or involving a facility or equipment of a  
11 project financed under this chapter not more than 50 percent of  
12 the peak hour fare;

13 (E) in carrying out a procurement under this section—

14 (i) will use competitive procurement (as defined or ap-  
15 proved by the Secretary);

16 (ii) will not use a procurement that uses exclusionary or  
17 discriminatory specifications; and

18 (iii) will comply with applicable Buy-American laws in car-  
19 rying out a procurement;

20 (F) has complied with subsection (c) of this section;

21 (G) has available and will provide the required amounts as pro-  
22 vided by subsection (e) of this section;

23 (H) will comply with sections 5301(a) and (d), 5303–5306, and  
24 5310(a)–(d) of this title;

25 (I) has a locally developed process to solicit and consider public  
26 comment before raising a fare or carrying out a major reduction  
27 of transportation; and

28 (J)(i) will expend for each fiscal year for mass transportation  
29 security projects, including increased lighting in or adjacent to a  
30 mass transportation system (including bus stops, subway stations,  
31 parking lots, and garages), increased camera surveillance of an  
32 area in or adjacent to that system, providing an emergency tele-  
33 phone line to contact law enforcement or security personnel in an  
34 area in or adjacent to that system, and any other project intended  
35 to increase the security and safety of an existing or planned mass  
36 transportation system, at least one percent of the amount the re-  
37 cipient receives for each fiscal year under section 5336 of this  
38 title; or

39 (ii) has decided that the expenditure for security projects is not  
40 necessary; and

41 (2) the Secretary accepts the certification.

1 (e) GOVERNMENT'S SHARE OF COSTS.—A grant of the Government for  
 2 a capital project (including associated capital maintenance items) under this  
 3 section is for 80 percent of the net project cost of the project. A recipient  
 4 may provide additional local matching amounts. A grant for operating ex-  
 5 penses may not be more than 50 percent of the net project cost of the  
 6 project. The remainder of the net project cost shall be provided in cash from  
 7 sources other than amounts of the Government or revenues from providing  
 8 mass transportation (excluding revenues derived from the sale of advertising  
 9 and concessions that are more than the amount of those revenues in the  
 10 fiscal year that ended September 30, 1985). Transit system amounts that  
 11 make up the remainder shall be from an undistributed cash surplus, a re-  
 12 placement or depreciation cash fund or reserve, or new capital.

13 (f) STATEWIDE OPERATING ASSISTANCE.—(1) A State authority that is  
 14 a designated recipient and providing mass transportation in at least 2 ur-  
 15 banized areas may apply for operating assistance in an amount not more  
 16 than the amount for all urbanized areas in which it provides transportation.

17 (2) When approving an application under paragraph (1) of this sub-  
 18 section, the Secretary may not reduce the amount of operating assistance  
 19 approved for another State or a local transportation authority within the af-  
 20 fected urbanized areas.

21 (g) UNDERTAKING PROJECTS IN ADVANCE.—(1) When a recipient obli-  
 22 gates all amounts apportioned to it under section 5336 of this title and then  
 23 carries out a part of a project described in this section (except a project  
 24 for operating expenses) without amounts of the Government and according  
 25 to all applicable procedures and requirements (except to the extent the pro-  
 26 cedures and requirements limit a State to carrying out a project with  
 27 amounts of the Government previously apportioned to it), the Secretary may  
 28 pay to the recipient the Government's share of the cost of carrying out that  
 29 part when additional amounts are apportioned to the recipient under section  
 30 5336 if—

- 31 (A) the recipient applies for the payment;
- 32 (B) the Secretary approves the payment; and
- 33 (C) before carrying out that part, the Secretary approves the plans  
 34 and specifications for the part in the same way as for other projects  
 35 under this section.

36 (2) The Secretary may approve an application under paragraph (1) of  
 37 this subsection only if an authorization for this section is in effect for the  
 38 fiscal year to which the application applies. The Secretary may not approve  
 39 an application if the payment will be more than—

(A) the recipient's expected apportionment under section 5336 of this title if the total amount authorized to be appropriated for the fiscal year to carry out this section is appropriated; less

(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

(3) The cost of carrying out that part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest allowed under this paragraph may not be more than the amount by which the estimated cost of carrying out the part (if it would be carried out at the time the part is converted to a regularly financed project) exceeds the actual cost (except interest) of carrying out the part.

(4) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (3) of this subsection.

(h) STREAMLINED ADMINISTRATIVE PROCEDURES.—The Secretary shall prescribe streamlined administrative procedures for complying with the certification requirement under subsection (d)(1)(B) and (C) of this section for track and signal equipment used in existing operations.

(i) REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

(i) the activities proposed under subsection (d) of this section in a timely and effective way and can continue to do so; and

(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

(B) An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

(2) At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (d) of this section and the planning process required under sections 5303–5306 of this title.

(3) The Secretary may take appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

(j) REPORTS.—A recipient (including a person receiving amounts from a chief executive officer of a State under this section) shall submit annually to the Secretary a report on the revenues the recipient derives from the sale of advertising and concessions.

(k) SUBMISSION OF CERTIFICATIONS.—A certification under subsection (d) of this section and any additional certification required by law to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of the grant application under this section. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(e)(2) of this title.

(l) PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Secretary to approve its procurement system. The Secretary shall approve the system for use for procurements financed under section 5336 of this title if, after consulting with the Administrator for Federal Procurement Policy, the Secretary decides the system provides for competitive procurement. Approval of a system under this subsection does not relieve a recipient of the duty to certify under subsection (d)(1)(E) of this section.

(m) OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used in ferryboat operations financed under section 5336 of this title that is part of a State-operated ferry system may be operated occasionally outside the urbanized area in which service is provided to accommodate periodic maintenance if existing ferry service is not reduced significantly by operating outside the area.

(n) RELATIONSHIP TO OTHER LAWS.—(1) Section 1001 of title 18 applies to a certificate or submission under this section. The Secretary may end a grant under this section and seek reimbursement, directly or by offsetting amounts available under section 5336 of this title, when a false or fraudulent statement or related act within the meaning of section 1001 is made in connection with a certification or submission.

(2) Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

### **§ 5308. Mass Transit Account block grants**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to be used only for capital projects (including capital maintenance items).

(b) APPLICATION OF OTHER SECTIONS.—(1) Sections 5307(a)–(d), (h)–(l), and (n) and 5336(a)–(c), (f), (g), and (j) of this title apply to amounts made available under section 5338(a) of this title to carry out this section.

(2) Sections 5307(e) and 5336(d) of this title apply to grants under this section.

1     **§ 5309. Discretionary grants and loans**

2     (a) GENERAL AUTHORITY.—The Secretary of Transportation may make  
3     grants and loans under this section to assist State and local governmental  
4     authorities in financing—

5         (1) capital projects for new fixed guideway systems, and extensions  
6         to existing fixed guideway systems, including the acquisition of real  
7         property, the initial acquisition of rolling stock for the systems, alter-  
8         natives analysis related to the development of the systems, and the ac-  
9         quisition of rights of way, and relocation, for fixed guideway corridor  
10        development for projects in the advanced stages of alternatives analysis  
11        or preliminary engineering;

12        (2) capital projects, including property and improvements (except  
13        public highways other than fixed guideway facilities), needed for an ef-  
14        ficient and coordinated mass transportation system;

15        (3) the capital costs of coordinating mass transportation with other  
16        transportation;

17        (4) the introduction of new technology, through innovative and im-  
18        proved products, into mass transportation;

19        (5) transportation projects that enhance urban economic develop-  
20        ment or incorporate private investment, including commercial and resi-  
21        dential development, because the projects—

22            (A) enhance the effectiveness of a mass transportation project  
23            and are related physically or functionally to that mass transpor-  
24            tation project; or

25            (B) establish new or enhanced coordination between mass trans-  
26            portation and other transportation;

27        (6) mass transportation projects planned, designed, and carried out  
28        to meet the special needs of elderly individuals and individuals with dis-  
29        abilities; and

30        (7) the development of corridors to support fixed guideway systems,  
31        including protecting rights of way through acquisition, construction of  
32        dedicated bus and high occupancy vehicle lanes and park and ride lots,  
33        and other nonvehicular capital improvements that the Secretary may  
34        decide would result in increased mass transportation usage in the cor-  
35        ridor.

36     (b) LOANS FOR REAL PROPERTY INTERESTS.—(1) The Secretary of  
37     Transportation may make loans under this section to State and local gov-  
38     ernmental authorities to acquire interests in real property for use on urban  
39     mass transportation systems as rights of way, station sites, and related pur-  
40     poses, including reconstruction, renovation, the net cost of property manage-  
41     ment, and relocation payments made under section 5324(a) of this title.

(2) The Secretary of Transportation may make a loan under paragraph (1) of this subsection for an approved project only after finding that the property reasonably is expected to be required for a mass transportation system and that it will be used for that system within a reasonable time.

(3) An applicant for a loan under this subsection shall provide a copy of the application to the planning agency for the community affected by the project at the same time the application is submitted to the Secretary of Transportation. If the planning agency submits comments to the Secretary not later than 30 days after the application is submitted, or, if the agency requests more time within those 30 days, within a period the Secretary establishes, the Secretary shall consider those comments before taking final action on the application.

(4) A loan agreement under this subsection shall provide that a capital project on the property will be started not later than 10 years after the fiscal year in which the agreement is made. If an interest in property acquired under this subsection is not used for the purpose for which it was acquired, an appraisal of the current value of the property or interest shall be made when a decision is made about the use. The decision shall be made within the 10-year period. Two-thirds of the increase in value shall be paid to the Secretary of Transportation for deposit in the Treasury as miscellaneous receipts.

(5) A loan under this subsection must be repaid not later than 10 years after the date of the loan agreement or on the date a grant agreement for a capital project on the property is made, whichever is earlier. Payments made to repay the loan shall be deposited in the Treasury as miscellaneous receipts.

(c) CONSIDERATION OF DECREASED COMMUTER RAIL TRANSPORTATION.—The Secretary of Transportation shall consider the adverse effect of decreased commuter rail transportation when deciding whether to approve a grant or loan under this section to acquire a rail line and all related facilities—

(1) owned by a rail carrier subject to reorganization under title 11; and

(2) used to provide commuter rail transportation.

(d) PROJECT AS PART OF APPROVED PROGRAM OF PROJECTS.—Except as provided in subsections (b)(2) and (e) of this section, the Secretary of Transportation may approve a grant or loan for a project under this section only after finding that the project is part of the approved program of projects required under sections 5303–5306 of this title and that an applicant—

1 (1) has or will have the legal, financial, and technical capacity to  
 2 carry out the project, satisfactory continuing control over the use of  
 3 equipment or facilities, and the capability to maintain the equipment  
 4 or facilities; and

5 (2) will maintain the equipment or facilities.

6 (e) CRITERIA FOR GRANTS AND LOANS FOR FIXED GUIDEWAY SYS-  
 7 TEMS.—(1) This subsection applies to a project—

8 (A) for which a letter of intent or contract for the complete amount  
 9 is issued under subsection (g) of this section after April 1, 1987; or

10 (B) not in the preliminary engineering, final design, or construction  
 11 stage on January 1, 1987.

12 (2) The Secretary of Transportation may approve a grant or loan under  
 13 this section for a capital project for a new fixed guideway system or exten-  
 14 sion of an existing fixed guideway system only if the Secretary decides that  
 15 the proposed project is—

16 (A) based on the results of an alternatives analysis and preliminary  
 17 engineering;

18 (B) justified based on a comprehensive review of its mobility im-  
 19 provements, environmental benefits, cost effectiveness, and operating  
 20 efficiencies; and

21 (C) supported by an acceptable degree of local financial commitment,  
 22 including evidence of stable and dependable financing sources to con-  
 23 struct, maintain, and operate the system or extension.

24 (3) In making a decision under paragraph (2) of this subsection, the Sec-  
 25 retary of Transportation shall—

26 (A) consider the direct and indirect costs of relevant alternatives;

27 (B) account for costs related to factors such as congestion relief, im-  
 28 proved mobility, air pollution, noise pollution, congestion, energy con-  
 29 sumption, and all associated ancillary and mitigation costs necessary to  
 30 carry out each alternative analyzed;

31 (C) identify and consider mass transportation supportive existing  
 32 land use policies and future patterns;

33 (D) consider the degree to which the project increases the mobility  
 34 of the mass transportation dependent population or promotes economic  
 35 development; and

36 (E) consider other factors the Secretary considers appropriate to  
 37 carry out this chapter.

38 (4)(A) The Secretary of Transportation shall issue guidelines on how the  
 39 Secretary will evaluate results of alternatives analysis, project justification,  
 40 and the degree of local financial commitment.

(B) The project justification under paragraph (1)(B) of this subsection shall be adjusted to reflect differences in local land, construction, and operating costs.

(C) The degree of local financial commitment is acceptable only if—

(i) the proposed project plan provides for the availability of contingency amounts the Secretary of Transportation determines to be reasonable to cover unanticipated cost overruns;

(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

(iii) local resources are available to operate the overall proposed mass transportation system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing mass transportation services to operate the proposed project.

(D) In assessing the stability, reliability, and availability of proposed sources of local financing, the Secretary of Transportation shall consider—

(i) existing grant commitments;

(ii) the degree to which financing sources are dedicated to the purposes proposed; and

(iii) any debt obligation that exists or is proposed by the recipient for the proposed project or other mass transportation purpose.

(5) A proposed project may advance from alternatives analysis to preliminary engineering only if the Secretary of Transportation finds that the project meets the requirements of this section and there is a reasonable chance that the project will continue to meet the requirements at the end of preliminary engineering.

(6)(A) A new fixed guideway system or extension of an existing fixed guideway system is not subject to the requirements of this subsection, and the simultaneous evaluation of similar projects in at least 2 corridors in a metropolitan area may not be limited, if—

(i) the project is located in an extreme or severe nonattainment area and is a transportation control measure (as defined by the Clean Air Act (42 U.S.C. 7401 et seq.)) required to carry out an approved State Implementation Plan; or

(ii) assistance provided under this section is less than \$25,000,000 or one-third of the total cost of the project or an appropriate program of projects as decided by the Secretary of Transportation.

(B) The simultaneous evaluation of projects in at least 2 corridors in a metropolitan area may not be limited and the Secretary of Transportation shall make decisions under this subsection with expedited procedures that



1 will promote carrying out an approved State Implementation Plan in a time-  
 2 ly way if a project is—

3 (i) located in a nonattainment area that is not an extreme or severe  
 4 nonattainment area;

5 (ii) a transportation control measure (as defined by the Clean Air  
 6 Act (42 U.S.C. 7401 et seq.)); and

7 (iii) required to carry out the State Implementation Plan.

8 (C) This subsection does not apply to a part of a project (including a  
 9 commuter rail transportation project on an existing right of way) financed  
 10 completely with amounts for highways made available under part A of title  
 11 I of the Intermodal Surface Transportation Efficiency Act of 1991 (Public  
 12 Law 102–240, 105 Stat. 1915).

13 (7) A project financed under this subsection shall be carried out through  
 14 a full financing grant agreement.

15 (f) REQUIRED PAYMENTS AND ELIGIBLE COSTS OF PROJECTS THAT EN-  
 16 HANCE URBAN ECONOMIC DEVELOPMENT OR INCORPORATE PRIVATE IN-  
 17 VESTMENT.—(1) Each grant or loan under subsection (a)(5) of this section  
 18 shall require that a person making an agreement to occupy space in a facil-  
 19 ity pay a reasonable share of the costs of the facility through rental pay-  
 20 ments and other means.

21 (2) Eligible costs for a project under subsection (a)(5) of this section—

22 (A) include property acquisition, demolition of existing structures,  
 23 site preparation, utilities, building foundations, walkways, open space,  
 24 and a capital project for, and improving, equipment or a facility for  
 25 an intermodal transfer facility or transportation mall; but

26 (B) do not include construction of a commercial revenue-producing  
 27 facility or a part of a public facility not related to mass transportation.

28 (g) LETTERS OF INTENT, FULL FINANCING GRANT AGREEMENTS, AND  
 29 EARLY SYSTEMS WORK AGREEMENTS.—(1)(A) The Secretary of Transpor-  
 30 tation may issue a letter of intent to an applicant announcing an intention  
 31 to obligate, for a project under this section, an amount from future available  
 32 budget authority specified in law that is not more than the amount stipu-  
 33 lated as the financial participation of the Secretary in the project. The  
 34 amount shall be sufficient to complete at least an operable segment when  
 35 a letter is issued for a fixed guideway project.

36 (B) At least 30 days before issuing a letter under subparagraph (A) of  
 37 this paragraph, the Secretary of Transportation shall notify in writing the  
 38 Committee on Public Works and Transportation of the House of Represent-  
 39 atives and the Committee on Banking, Housing, and Urban Affairs of the  
 40 Senate of the proposed issuance of the letter.

1 (C) The issuance of a letter is deemed not to be an obligation under sec-  
 2 tions 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative  
 3 commitment.

4 (D) An obligation or administrative commitment may be made only when  
 5 amounts are appropriated.

6 (2)(A) The Secretary of Transportation may make a full financing grant  
 7 agreement with an applicant. The agreement shall—

8 (i) establish the terms of participation by the United States Govern-  
 9 ment in a project under this section;

10 (ii) establish the maximum amount of Government financial assist-  
 11 ance for the project;

12 (iii) cover the period of time for completing the project, including a  
 13 period extending beyond the period of an authorization; and

14 (iv) make timely and efficient management of the project easier ac-  
 15 cording to the law of the United States.

16 (B) An agreement under this paragraph obligates an amount of available  
 17 budget authority specified in law and may include a commitment, contingent  
 18 on amounts to be specified in law in advance for commitments under this  
 19 paragraph, to obligate an additional amount from future available budget  
 20 authority specified in law. The agreement shall state that the contingent  
 21 commitment is not an obligation of the Government. Interest and other fi-  
 22 nancing costs of efficiently carrying out a part of the project within a rea-  
 23 sonable time are a cost of carrying out the project under a full financing  
 24 grant agreement, except that eligible costs may not be more than the cost  
 25 of the most favorable financing terms reasonably available for the project  
 26 at the time of borrowing. The applicant shall certify, in a way satisfactory  
 27 to the Secretary of Transportation, that the applicant has shown reasonable  
 28 diligence in seeking the most favorable financing terms. The amount stipu-  
 29 lated in an agreement under this paragraph for a fixed guideway project  
 30 shall be sufficient to complete at least an operable segment.

31 (3)(A) The Secretary of Transportation may make an early systems work  
 32 agreement with an applicant if a record of decision under the National En-  
 33 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued  
 34 on the project and the Secretary finds there is reason to believe—

35 (i) a full financing grant agreement for the project will be made; and

36 (ii) the terms of the work agreement will promote ultimate comple-  
 37 tion of the project more rapidly and at less cost.

38 (B) A work agreement under this paragraph obligates an amount of avail-  
 39 able budget authority specified in law and shall provide for reimbursement  
 40 of preliminary costs of carrying out the project, including land acquisition,  
 41 timely procurement of system elements for which specifications are decided,

1 and other activities the Secretary of Transportation decides are appropriate  
2 to make efficient, long-term project management easier. A work agreement  
3 shall cover the period of time the Secretary considers appropriate. The pe-  
4 riod may extend beyond the period of current authorization. Interest and  
5 other financing costs of efficiently carrying out the work agreement within  
6 a reasonable time are a cost of carrying out the agreement, except that eli-  
7 gible costs may not be more than the cost of the most favorable financing  
8 terms reasonably available for the project at the time of borrowing. The ap-  
9 plicant shall certify, in a way satisfactory to the Secretary, that the appli-  
10 cant has shown reasonable diligence in seeking the most favorable financing  
11 terms. If an applicant does not carry out the project for reasons within the  
12 control of the applicant, the applicant shall repay all Government payments  
13 made under the work agreement plus reasonable interest and penalty  
14 charges the Secretary establishes in the agreement.

15 (4) The total estimated amount of future obligations of the Government  
16 and contingent commitments to incur obligations covered by all outstanding  
17 letters of intent, full financing grant agreements, and early systems work  
18 agreements may be not more than the greater of the amount authorized  
19 under section 5338(a) of this title to carry out this section or 50 percent  
20 of the uncommitted cash balance remaining in the Mass Transit Account  
21 of the Highway Trust Fund (including amounts received from taxes and in-  
22 terest earned that are more than amounts previously obligated), less an  
23 amount the Secretary of Transportation reasonably estimates is necessary  
24 for grants under this section not covered by a letter. The total amount cov-  
25 ered by new letters and contingent commitments included in full financing  
26 grant agreements and early systems work agreements may be not more than  
27 a limitation specified in law.

28 (h) GOVERNMENT'S SHARE OF NET PROJECT COST.—Based on engineer-  
29 ing studies, studies of economic feasibility, and information on the expected  
30 use of equipment or facilities, the Secretary of Transportation shall estimate  
31 the net project cost. A grant for the project is for 80 percent of the net  
32 project cost, unless the grant recipient requests a lower grant percentage.  
33 The remainder shall be provided in cash from a source other than amounts  
34 of the Government. Transit system amounts that make up the remainder  
35 must be from an undistributed cash surplus, a replacement or depreciation  
36 cash fund or reserve, or new capital. The remainder for a planned extension  
37 to a fixed guideway system may include the cost of rolling stock previously  
38 purchased if the applicant satisfies the Secretary that only amounts other  
39 than amounts of the Government were used and that the purchase was  
40 made for use on the extension. A refund or reduction of the remainder may

1 be made only if a refund of a proportional amount of the grant of the Gov-  
 2 ernment is made at the same time.

3 (i) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b)  
 4 of this section, a loan, including a renewal or extension of the loan, may  
 5 be made, and a security or obligation may be bought, only if it has a matu-  
 6 rity date of not more than 40 years. Interest on a loan may not be less  
 7 than—

8 (1) a rate the Secretary of the Treasury establishes, considering the  
 9 current average yield on outstanding marketable obligations of the Gov-  
 10 ernment that have remaining periods of maturity comparable to the av-  
 11 erage maturity of the loan, adjusted to the nearest .125 percent; plus

12 (2) an allowance the Secretary of Transportation considers adequate  
 13 to cover administrative costs and probable losses.

14 (j) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital  
 15 project may forgive repaying the loan and interest in place of a cash grant  
 16 for the amount forgiven. The amount is part of the grant and part of the  
 17 contribution of the Government to the cost of the project.

18 (k) LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.—The  
 19 Secretary of Transportation may not make a loan under this section for a  
 20 project for which a grant (except a relocation payment grant) is made under  
 21 this section. However, the Secretary may make a project grant even though  
 22 real property for the project has been or will be acquired through a loan  
 23 under subsection (b) of this section.

24 (l) FISCAL CAPACITY CONSIDERATIONS.—If the Secretary of Transpor-  
 25 tation gives priority consideration to financing projects that include more  
 26 than the non-Government share required under subsection (h) of this sec-  
 27 tion, the Secretary shall give equal consideration to differences in the fiscal  
 28 capacity of State and local governments.

29 (m) ALLOCATING AMOUNTS.—(1) Of the amounts available for grants  
 30 and loans under this section for each of the fiscal years ending September  
 31 30, 1993–1997—

32 (A) 40 percent is available for fixed guideway modernization;

33 (B) 40 percent is available for capital projects for new fixed guide-  
 34 way systems and extensions to existing fixed guideway systems; and

35 (C) 20 percent is available to replace, rehabilitate, and buy buses  
 36 and related equipment and to construct bus-related facilities.

37 (2) At least 5.5 percent of the amounts available in each fiscal year under  
 38 paragraph (1)(C) of this subsection is available for areas other than urban-  
 39 ized areas.

40 (3) Not later than January 20 of each year, the Secretary of Transpor-  
 41 tation shall submit to the Committee on Public Works and Transportation

of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a proposal on the allocation of amounts to be made available to finance grants and loans for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems among applicants for those amounts.

(4) A person applying for, or receiving, assistance for a project described in clause (A), (B), or (C) of paragraph (1) of this subsection may receive assistance for a project described in another of those clauses.

(n) UNDERTAKING PROJECTS IN ADVANCE.—(1) The Secretary of Transportation may pay the Government's share of the net project cost to a State or local governmental authority that carries out any part of a project described in this section or a substitute transit project described in section 103(e)(4) of title 23 without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(A) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section or section 103(e)(4) of title 23.

(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(3) The Secretary of Transportation shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

(o) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

**§ 5310. Grants and loans for special needs of elderly individuals and individuals with disabilities**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans to—

(1) State and local governmental authorities to help them provide mass transportation service planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

(2) the chief executive officer of each State for allocation to—

(A) private nonprofit corporations and associations to help them provide that transportation service when the transportation service provided under clause (1) of this subsection is unavailable, insufficient, or inappropriate; or

(B) governmental authorities—

(i) approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

(ii) that certify to the chief executive officer that no nonprofit corporation or association readily is available in an area to provide service under this subsection.

(b) APPORTIONING AND TRANSFERRING AMOUNTS.—The Secretary shall apportion amounts made available under section 5338(a) of this title under a formula the Secretary administers that considers the number of elderly individuals and individuals with disabilities in each State. Any State's apportionment remaining available for obligation at the beginning of the 90-day period before the end of the period of availability of the apportionment is available to the chief executive officer of the State for transfer to supplement amounts apportioned to the State under section 5311(c) or 5336(a)(1) of this title.

(c) STATE PROGRAM OF PROJECTS.—Amounts made available for this section may be used for transportation projects to assist in providing transportation services for elderly individuals and individuals with disabilities that are included in a State program of projects. A program shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other United States Government sources.

(d) ELIGIBLE CAPITAL EXPENSES.—A recipient of amounts under this section may include acquiring transportation services as an eligible capital expense.

(e) APPLICATION OF SECTION 5309.—(1) A grant or loan under subsection (a)(1) of this section is subject to all requirements of a grant or loan under section 5309 of this title, and is deemed to have been made under section 5309.

(2) A grant or loan under subsection (a)(2) of this section is subject to requirements similar to those under paragraph (1) of this subsection to the extent the Secretary considers appropriate.

(f) MINIMUM REQUIREMENTS AND PROCEDURES FOR RECIPIENTS.—In carrying out section 5301(d) of this title, section 165(b) of the Federal-Aid Highway Act of 1973 (Public Law 93–87, 87 Stat. 282), and section 504

1 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (consistent with Govern-  
 2 ment-wide standards to carry out section 504), the Secretary shall prescribe  
 3 regulations establishing minimum criteria a recipient of Government finan-  
 4 cial assistance under this chapter or a law referred to in section 165(b) shall  
 5 comply with in providing mass transportation service to elderly individuals  
 6 and individuals with disabilities and procedures for the Secretary to monitor  
 7 compliance with the criteria. The regulations shall include provisions for en-  
 8 suring that organizations and groups representing elderly individuals and  
 9 individuals with disabilities are given adequate notice of, and an opportunity  
 10 to comment on, the proposed activity of a recipient to achieve compliance  
 11 with the regulations.

12 (g) LEASING VEHICLES.—The Secretary shall prescribe guidelines allow-  
 13 ing vehicles bought under this section to be leased to local governmental au-  
 14 thorities to improve transportation services designed to meet the special  
 15 needs of elderly individuals and individuals with disabilities.

16 (h) MEAL DELIVERY SERVICE TO HOMEBOUND INDIVIDUALS.—Mass  
 17 transportation service providers receiving assistance under this section or  
 18 section 5311(c) of this title may coordinate and assist in regularly providing  
 19 meal delivery service for homebound individuals if the delivery service does  
 20 not conflict with providing mass transportation service or reduce service to  
 21 mass transportation passengers.

22 (i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the  
 23 recipient currently having a facility or equipment acquired with assistance  
 24 under this section, a State may transfer the facility or equipment to any  
 25 recipient eligible to receive assistance under this chapter if the facility or  
 26 equipment will continue to be used as required under this section.

27 (j) FARES NOT REQUIRED.—This chapter does not require that elderly  
 28 individuals and individuals with disabilities be charged a fare.

29 **§ 5311. Financial assistance for other than urbanized areas**

30 (a) DEFINITION.—In this section, “recipient” includes a State authority,  
 31 a local governmental authority, a nonprofit organization, and an operator  
 32 of mass transportation service.

33 (b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may  
 34 make grants for transportation projects that are included in a State pro-  
 35 gram of mass transportation service projects (including service agreements  
 36 with private providers of mass transportation service) for areas other than  
 37 urbanized areas. The program shall be submitted annually to the Secretary.  
 38 The Secretary may approve the program only if the Secretary finds that the  
 39 program provides a fair distribution of amounts in the State, including In-  
 40 dian reservations, and the maximum feasible coordination of mass transpor-

1     tation service assisted under this section with transportation service assisted  
2     by other United States Government sources.

3     (2) The Secretary of Transportation shall carry out a rural transportation  
4     assistance program in nonurbanized areas. In carrying out this paragraph,  
5     the Secretary may make grants and contracts for transportation research,  
6     technical assistance, training, and related support services in nonurbanized  
7     areas.

8     (c) APPORTIONING AMOUNTS.—The Secretary of Transportation shall ap-  
9     portion amounts made available under section 5338(a) of this title so that  
10    the chief executive officer of each State receives an amount equal to the  
11    total amount apportioned multiplied by a ratio equal to the population of  
12    areas other than urbanized areas in a State divided by the population of  
13    all areas other than urbanized areas in the United States, as shown by the  
14    most recent of the following: the latest Government census, the population  
15    estimate the Secretary of Commerce prepares after the 4th year after the  
16    date the latest census is published, or the population estimate the Secretary  
17    of Commerce prepares after the 8th year after the date the latest census  
18    is published. The amount may be obligated by the chief executive officer for  
19    2 years after the fiscal year in which the amount is apportioned. An amount  
20    that is not obligated at the end of that period shall be reapportioned among  
21    the States for the next fiscal year.

22    (d) USE FOR LOCAL TRANSPORTATION SERVICE.—A State may use an  
23    amount apportioned under this section for a project included in a program  
24    under subsection (b) of this section and eligible for assistance under this  
25    chapter if the project will provide local transportation service, as defined by  
26    the Secretary of Transportation, in an area other than an urbanized area.

27    (e) USE FOR ADMINISTRATION AND TECHNICAL ASSISTANCE.—(1) The  
28    Secretary of Transportation may allow a State to use not more than 15 per-  
29    cent of the amount apportioned under this section to administer this section  
30    and provide technical assistance to a recipient, including project planning,  
31    program and management development, coordination of mass transportation  
32    programs, and research the State considers appropriate to promote effective  
33    delivery of mass transportation to an area other than an urbanized area.

34    (2) Except as provided in this section, a State carrying out a program  
35    of operating assistance under this section may not limit the level or extent  
36    of use of the Government grant for the payment of operating expenses.

37    (f) INTERCITY BUS TRANSPORTATION.—(1) A State shall expend at least  
38    10 percent of the amount made available in the fiscal year ending Septem-  
39    ber 30, 1993, and 15 percent of the amount made available in each fiscal  
40    year after September 30, 1993, to carry out a program to develop and sup-



port intercity bus transportation. Eligible activities under the program include—

(A) planning and marketing for intercity bus transportation;

(B) capital grants for intercity bus shelters;

(C) joint-use stops and depots;

(D) operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects; and

(E) coordinating rural connections between small mass transportation operations and intercity bus carriers.

(2) A State does not have to comply with paragraph (1) of this subsection in a fiscal year in which the chief executive officer of the State certifies to the Secretary of Transportation that the intercity bus service needs of the State are being met adequately.

(g) GOVERNMENT'S SHARE OF COSTS.—(1) In this subsection, “amounts of the Government or revenues” do not include amounts received under a service agreement with a State or local social service agency or a private social service organization.

(2) A grant of the Government for a capital project under this section may not be more than 80 percent of the net cost of the project, as determined by the Secretary of Transportation. A grant to pay a subsidy for operating expenses may not be more than 50 percent of the net cost of the operating expense project. At least 50 percent of the remainder shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation. Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(h) AMOUNTS FOR OPERATING ASSISTANCE.—An amount made available under this section may be used for operating assistance.

(i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

(j) RELATIONSHIP TO OTHER LAWS.—(1) Sections 5323(a)(1)(D) and 5333(b) of this title apply to this section but the Secretary of Labor may waive the application of section 5333(b).

(2) This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.

**§ 5312. Research, development, demonstration, and training projects**

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may undertake, or make grants or contracts (including agreements with departments, agencies, and instrumentalities of the United States Government) for, research, development, and demonstration projects related to urban mass transportation that the Secretary decides will help reduce urban transportation needs, improve mass transportation service, or help mass transportation service meet the total urban transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.

(b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may make grants to nonprofit institutions of higher learning—

(A) to conduct competent research and investigations into the theoretical or practical problems of urban transportation; and

(B) to train individuals to conduct further research or obtain employment in an organization that plans, builds, operates, or manages an urban transportation system.

(2) Research and investigations under this subsection include—

(A) the design and use of urban mass transportation systems and urban roads and highways;

(B) the interrelationship between various modes of urban and inter-urban transportation;

(C) the role of transportation planning in overall urban planning;

(D) public preferences in transportation;

(E) the economic allocation of transportation resources; and

(F) the legal, financial, engineering, and esthetic aspects of urban transportation.

(3) When making a grant under this subsection, the appropriate Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to urban transportation problems.

(c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METHODS.—(1) The Secretary of Transportation may make grants to States, local governmental authorities, and operators of mass transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the mass transportation field.

(2) The Secretary of Transportation may make grants to State and local governmental authorities for projects that will use innovative techniques and methods in managing and providing mass transportation.

(3) A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the mass transportation industry. The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient mass transportation operation. A grant for a fellowship may not be more than the lesser of \$24,000 or 75 percent of—

(A) tuition and other charges to the fellowship recipient;

(B) additional costs incurred by the training institution and billed to the grant recipient; and

(C) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

#### **§ 5313. State planning and research programs**

(a) COOPERATIVE RESEARCH PROGRAM.—(1) Fifty percent of the amounts made available under section 5338(g)(3) of this title are available for a mass transportation cooperative research program. The Secretary of Transportation shall establish an independent governing board for the program. The board shall recommend mass transportation research, development, and technology transfer activities the Secretary considers appropriate.

(2) The Secretary may make grants to, and cooperative agreements with, the National Academy of Sciences to carry out activities under this subsection that the Secretary decides are appropriate.

(b) STATE PLANNING AND RESEARCH.—(1) Fifty percent of the amounts made available under section 5338(g)(3) of this title shall be apportioned to States for grants and contracts consistent with the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title. The amounts shall be apportioned so that each State receives an amount equal to the population in urbanized areas in the State, divided by the population in urbanized areas in all States, as shown by the latest available decennial census. However, a State must receive at least .5 percent of the amount apportioned under this subsection.

(2) A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (a) of this section.

(3) An amount apportioned under this subsection—

(A) remains available for 3 years after the fiscal year in which the amount is apportioned; and

1 (B) that is unobligated at the end of the 3-year period shall be  
2 reapportioned among the States for the next fiscal year.

3 (c) GOVERNMENT'S SHARE.—When there would be a clear and direct fi-  
4 nancial benefit to an entity under a grant or contract financed under sub-  
5 section (a) of this section, the Secretary shall establish a United States Gov-  
6 ernment share consistent with the benefit.

7 **§ 5314. National planning and research programs**

8 (a) PROGRAM.—(1) The amounts made available under section  
9 5338(g)(4) of this title are available to the Secretary of Transportation for  
10 grants and contracts for the purposes of sections 5303–5306, 5312, 5315,  
11 5317, and 5322 of this title, as the Secretary considers appropriate.

12 (2) Of the amounts made available under paragraph (1) of this sub-  
13 section, the Secretary shall make available at least \$2,000,000 to provide  
14 mass transportation-related technical assistance, demonstration programs,  
15 research, public education, and other activities the Secretary considers ap-  
16 propriate to help mass transportation providers comply with the Americans  
17 with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). To the extent prac-  
18 ticable, the Secretary shall carry out this paragraph through a contract with  
19 a national nonprofit organization serving individuals with disabilities that  
20 has a demonstrated capacity to carry out the activities.

21 (3) Not more than 25 percent of the amounts available under paragraph  
22 (1) of this subsection is available to the Secretary for special demonstration  
23 initiatives, subject to terms the Secretary considers consistent with this  
24 chapter, except that section 5323(a)(1)(D) of this title applies to an oper-  
25 ational grant financed in carrying out section 5312(a) of this title. For a  
26 nonrenewable grant of not more than \$100,000, the Secretary shall provide  
27 expedited procedures on complying with the requirements of this chapter.

28 (4)(A) The Secretary may undertake a program of mass transportation  
29 technology development in coordination with affected entities.

30 (B) The Secretary shall establish an Industry Technical Panel composed  
31 of representatives of transportation suppliers and operators and others in-  
32 volved in technology development. A majority of the Panel members shall  
33 represent the supply industry. The Panel shall assist the Secretary in identi-  
34 fying priority technology development areas and in establishing guidelines  
35 for project development, project cost sharing, and project execution.

36 (C) The Secretary shall develop guidelines for cost sharing in technology  
37 development projects financed under this paragraph. The guidelines shall be  
38 flexible and reflect the extent of technical risk, market risk, and anticipated  
39 supplier benefits and payback periods.

(5) The Secretary may use amounts appropriated under this subsection to supplement amounts available under section 5313(a) of this title, as the Secretary considers appropriate.

(b) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant or contract financed under subsection (a) of this section, the Secretary shall establish a United States Government share consistent with the benefit.

**§ 5315. National mass transportation institute**

(a) ESTABLISHMENT AND DUTIES.—The Secretary of Transportation shall make grants to Rutgers University to establish a national mass transportation institute. In cooperation with the Federal Transit Administration, State transportation departments, public mass transportation authorities, and national and international entities, the institute shall develop and conduct training programs of instruction for United States Government, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid mass transportation work. The programs may include courses in recent developments, techniques, and procedures related to—

- (1) mass transportation planning;
- (2) management;
- (3) environmental factors;
- (4) acquisition and joint use of rights of way;
- (5) engineering;
- (6) procurement strategies for mass transportation systems;
- (7) turnkey approaches to carrying out mass transportation systems;
- (8) new technologies;
- (9) emission reduction technologies;
- (10) ways to make mass transportation accessible to individuals with disabilities;
- (11) construction;
- (12) maintenance;
- (13) contract administration; and
- (14) inspection.

(b) RELATED EDUCATIONAL AND TRAINING PROGRAMS.—The Secretary shall delegate to the institute the authority of the Secretary to develop and conduct educational and training programs related to mass transportation.

(c) PROVIDING EDUCATION AND TRAINING.—Education and training of Government, State, and local transportation employees under this section shall be provided—

- (1) by the Secretary at no cost to the States and local governments for subjects that are a Government program responsibility; or

1 (2) when the education and training are paid under subsection (d)  
 2 of this section, by the State, with the approval of the Secretary,  
 3 through grants and contracts with public and private agencies, other  
 4 institutions, individuals, and the institute.

5 (d) AVAILABILITY OF AMOUNTS.—Not more than .5 percent of the  
 6 amounts made available for a fiscal year beginning after September 30,  
 7 1991, to a State or public mass transportation authority in the State to  
 8 carry out sections 5304 and 5306 of this title is available for expenditure  
 9 by the State and public mass transportation authorities in the State, with  
 10 the approval of the Secretary, to pay not more than 80 percent of the cost  
 11 of tuition and direct educational expenses related to educating and training  
 12 State and local transportation employees under this section.

13 **§ 5316. University research institutes**

14 (a) INSTITUTE FOR NATIONAL SURFACE TRANSPORTATION POLICY.—  
 15 The Secretary of Transportation shall make grants to San Jose State Uni-  
 16 versity to establish and operate an institute for national surface transpor-  
 17 tation policy studies. The institute shall—

18 (1) include male and female students of diverse socioeconomic and  
 19 ethnic backgrounds who are seeking careers in developing and operat-  
 20 ing surface transportation programs; and

21 (2) conduct research and development activities to analyze ways of  
 22 improving aspects of developing and operating surface transportation  
 23 programs of the United States.

24 (b) INFRASTRUCTURE TECHNOLOGY INSTITUTE.—The Secretary shall  
 25 make grants to Northwestern University to establish and operate an insti-  
 26 tute to study techniques—

27 (1) to evaluate and monitor infrastructure conditions;

28 (2) to improve information systems for infrastructure construction  
 29 and management; and

30 (3) to study advanced materials and automated processes for con-  
 31 structing and rehabilitating public works facilities.

32 (c) URBAN TRANSIT INSTITUTE.—The Secretary shall make grants to  
 33 North Carolina A. and T. State University through the Institute for Trans-  
 34 portation Research and Education, the University of South Florida, and a  
 35 consortium of Florida A. and M., Florida State University, and Florida  
 36 International University to establish and operate an interdisciplinary insti-  
 37 tute to study and disseminate techniques on the diverse transportation prob-  
 38 lems of urban areas experiencing significant and rapid growth.

39 (d) INSTITUTE FOR INTELLIGENT VEHICLE-HIGHWAY CONCEPTS.—The  
 40 Secretary shall make grants to the University of Minnesota, Center for  
 41 Transportation Studies, to establish and operate a national institute for in-

telligent vehicle-highway concepts. The institute shall conduct research and recommend development activities that focus on methods to increase roadway capacity, enhance safety, and reduce negative environmental effects of transportation facilities by using intelligent vehicle-highway systems technologies.

(e) INSTITUTE FOR TRANSPORTATION RESEARCH AND EDUCATION.—The Secretary shall make grants to the University of North Carolina to conduct research and development and to direct technology transfer and training for State and local transportation authorities to improve the overall surface transportation infrastructure.

(f) APPLICABILITY OF TITLE 23.—Amounts authorized by section 5338(d) of this title may be obligated in the same way as amounts are apportioned under chapter 1 of title 23.

#### **§ 5317. Transportation centers**

(a) GRANTS FOR REGIONAL TRANSPORTATION CENTERS.—(1) The Secretary of Transportation shall make grants to nonprofit institutions of higher learning to establish and operate regional transportation centers in each of the 10 United States Government regions that comprise the Standard Federal Regional Boundary System.

(2) A nonprofit institution of higher learning interested in receiving a grant under this subsection shall submit an application to the Secretary in the way and containing the information the Secretary prescribes. The Secretary shall select each recipient on the basis of the following:

(A) the regional transportation center is located in a State that is representative of the needs of the Government region for improved transportation and facilities.

(B) the demonstrated research and extension resources available to the recipient to carry out this subsection.

(C) the capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

(D) the recipient has an established transportation program encompassing several modes of transportation.

(E) the recipient has a demonstrated commitment of at least \$200,000 in regularly budgeted institutional amounts each year to support ongoing transportation research programs.

(F) the recipient has a demonstrated ability to disseminate results of transportation research and educational programs through a statewide or regionwide continuing educational program.

(G) the projects the recipient proposes to carry out under the grant.

(3)(A) At each regional transportation center, the following shall be carried out:

(i) infrastructure research on transportation.

(ii) research and training on transportation safety and the transportation of passengers and property and the interpretation, publication, and dissemination of the results of the research.

(B) Each transportation center—

(i) should carry out research on more than one mode of transportation; and

(ii) should consider the proportion of amounts for this subsection from amounts available to carry out urban mass transportation projects under this chapter and from the Highway Trust Fund.

(C) At one of the transportation centers, research may be carried out on the testing of new bus models.

(4) Before making a grant under this subsection, the Secretary may require the recipient to make an agreement with the Secretary to ensure that the recipient will maintain total expenditures from all other sources to establish and operate a regional transportation center and related research activities at a level at least equal to the average level of those expenditures in its 2 fiscal years prior to April 2, 1987.

(5) A grant under this subsection is for 50 percent of the cost of establishing and operating the regional transportation center and related research activities the recipient carries out.

(b) GRANTS FOR UNIVERSITY TRANSPORTATION CENTERS.—(1) To accelerate the involvement and participation of minority individuals and women in transportation-related professions, particularly in the science, technology, and engineering disciplines, the Secretary shall make grants to Morgan State University to establish a national center for transportation management, research, and development. The center shall give special attention to designing, developing, and carrying out research, training, and technology transfer activities to increase the number of highly skilled minority individuals and women entering the transportation workforce.

(2) The Secretary shall make grants to the New Jersey Institute of Technology to establish and operate a center for transportation and industrial productivity. The center shall conduct research and development activities that focus on ways to increase surface transportation capacity, reduce congestion, and reduce costs for transportation system users and providers through the use of transportation management systems.

(3) The Secretary shall make a grant to Monmouth College, West Long Branch, New Jersey, to modify and rebuild Building Number 500 at Monmouth College. Before making the grant, the Secretary shall receive assur-



ances from Monmouth College that the building will be known and designated as the James and Marlene Howard Transportation Information Center and that transportation-related instruction and research in computer science, electronic engineering, mathematics, and software engineering conducted at the building will be coordinated with the Center for Transportation and Industrial Productivity at the New Jersey Institute of Technology.

(4) The Secretary shall make grants to the University of Arkansas to establish a national rural transportation center. The center shall conduct research, training, and technology transfer activities in the development, management, and operation of intermodal transportation systems in rural areas.

(5)(A) The Secretary shall make grants to the University of Idaho to establish a National Center for Advanced Transportation Technology. The Center shall be established and operated in partnership with private industry and shall conduct industry-driven research and development activities that focus on transportation-related manufacturing and engineering processes, materials, and equipment.

(B) The Secretary shall make grants to the University of Idaho to plan, design, and construct a building in which to conduct the research and development activities of the Center.

(C) Amounts authorized by section 5338(e)(2) of this title may be obligated in the same way as amounts apportioned under chapter 1 of title 23 (except that the Government share of the cost of the activities conducted under this paragraph is 80 percent and the amounts remain available until expended) and are not subject to an obligational limitation.

(D) A grant made under this paragraph is not subject to the requirements of this section (except this paragraph).

(c) PROGRAM COORDINATION.—The Secretary shall provide for coordinating research, education, training, and technology transfer activities that grant recipients carry out under this section, the dissemination of the results of the research, and the establishment and operation of a clearinghouse between the centers and the transportation industry. At least annually, the Secretary shall review and evaluate programs the grant recipients carry out. The Secretary may use not more than one percent of amounts made available from Government sources to carry out this section to carry out this subsection.

(d) OBLIGATION CEILING.—Amounts authorized to carry out this section (except subsection (b)(3)) are subject to obligational limitations established under section 1002 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1916).

(e) AMOUNTS AVAILABLE FOR TECHNOLOGY TRANSFER ACTIVITIES.—At least 5 percent of the amounts made available to carry out this section in a fiscal year are available to carry out technology transfer activities.

(f) ALLOCATION AMONG GOVERNMENT REGIONS.—The Secretary shall allocate amounts available to carry out this section equitably among the Government regions.

**§ 5318. Bus testing facility**

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. The facility shall be established by renovating a facility built with assistance of the United States Government to train rail personnel.

(b) OPERATION AND MAINTENANCE.—The Secretary shall make a contract with a qualified person to operate and maintain the facility. The contract may provide for the testing of rail cars and other vehicles at the facility.

(c) FEES.—The person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary must approve the fees.

(d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—The Secretary shall make a contract with the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available under section 5338(j)(5) of this title. The entity having the vehicle tested shall pay 20 percent of the cost.

(e) REVOLVING LOAN FUND.—The Secretary has a bus testing revolving loan fund consisting of amounts authorized for the fund under section 317(b)(5) of the Surface Transportation and Relocation Assistance Act of 1987. The Secretary shall make available as repayable advances from the fund to the person operating and maintaining the facility amounts to operate and maintain the facility.

**§ 5319. Bicycle facilities**

A project to provide access for bicycles to mass transportation facilities, to provide shelters and parking facilities for bicycles in or around mass transportation facilities, or to install equipment for transporting bicycles on mass transportation vehicles is a capital project eligible for assistance under sections 5307, 5309, and 5311 of this title. Notwithstanding sections 5307(e), 5309(h), and 5311(g) of this title, a grant of the United States Government under this chapter for a project under this section is for 90 percent of the cost of the project.

**§ 5320. Suspended light rail system technology pilot project**

(a) PURPOSE.—The purpose of this section is to provide for the construction by a public entity of a suspended light rail system technology pilot project—

(1) to assess the state of new technology for a suspended light rail system; and

(2) to establish the feasibility, costs, and benefits of using the system to transport passengers.

(b) GENERAL REQUIREMENTS.—The project shall—

(1) use new rail technology with individual vehicles on a prefabricated elevated steel guideway;

(2) be stability-seeking with a center of gravity for the detachable passenger vehicles located below the point of wheel-rail contact; and

(3) use vehicles that are driven by overhead bogies with high efficiency, low maintenance electric motors for each wheel, operating in a slightly sloped plane from vertical for the wheels and the running rails, to further increase stability, acceleration, and braking performance.

(c) COMPETITION.—(1) The Secretary of Transportation shall conduct a national competition to select a public entity with which to make a full financing grant agreement to construct the project. Not later than April 16, 1992, the Secretary shall select 3 public entities to be finalists in the competition. In conducting the competition and selecting public entities, the Secretary shall consider—

(A) the public entity's demonstrated understanding and knowledge of the project and its technical, managerial, and financial capacity to construct, manage, and operate the project; and

(B) maximizing potential contributions to the cost of the project by State, local, and private sector entities, including donation of in-kind services and materials.

(2) The Secretary shall award a grant to each finalist to be used to participate in the final phase of the competition under procedures the Secretary prescribes. A grant may not be more than 80 percent of the cost of participating. A finalist may not receive more than one-third of the amount made available under subsection (h)(1)(A) of this section.

(3) Not later than July 15, 1992, the Secretary shall select from among the 3 finalists a public entity with which to make a full financing grant agreement.

(d) ENVIRONMENTAL IMPACT.—Not later than 270 days after a public entity is selected under subsection (c) of this section, the Secretary shall approve and publish in the Federal Register a notice announcing either a finding of no significant impact or a draft environmental impact statement

for the project. The alternatives analysis for the project shall include a decision on whether to construct the project. If a draft statement is published, the Secretary, not later than 180 days after publication, shall approve and publish in the Federal Register a notice of completion of a final environmental impact statement.

(e) FULL FINANCING GRANT AGREEMENT.—Not later than 60 days after carrying out the requirements of subsection (d) of this section, the Secretary shall make a full financing grant agreement under section 5309 of this title with the public entity selected under subsection (c) of this section to construct the project. The agreement shall provide that the system vendor for the project shall finance—

(1) 100 percent of any deficit incurred in operating the project in the first 2 years of revenue operations of the project; and

(2) 50 percent of any deficit incurred in operating the project in the 3d year of revenue operations of the project.

(f) NOTICE TO PROCEED.—Not later than 30 days after making the full financing grant agreement, the Secretary shall issue a notice to proceed with construction.

(g) Option Not To Construct and Reawarding the Grant.—(1) Not later than 30 days after completing preliminary engineering and design, the selected public entity shall decide whether to proceed to constructing the project. If the entity decides not to proceed—

(A) the Secretary shall not make the full financing grant agreement;

(B) remaining amounts received shall be returned to the Secretary and credited to the Mass Transit Account of the Highway Trust Fund; and

(C) the Secretary shall use the credited amount and other amounts to be provided under this section to award to another entity selected under subsection (c)(1) of this section a grant under section 5309 of this title to construct the project.

(2) Not later than 60 days after a decision is made under paragraph (1) of this subsection, a grant shall be awarded under paragraph (1)(C) of this section after completing a competitive process for selecting the grant recipient.

(h) FINANCING.—(1) The Secretary shall pay from amounts provided under section 5309 of this title the following:

(A) at least \$1,000,000 for the fiscal year ending September 30, 1992, for grants under subsection (c)(2) of this section.

(B) at least \$4,000,000 for the fiscal year ending September 30, 1993, for the United States Government share of the costs (as determined under section 5309 of this title) if the systems planning, alter-

1 natives analysis, preliminary engineering, and design and environ-  
 2 mental impact statement are required by law for the project.

3 (C) at least \$30,000,000 for the fiscal year ending September 30,  
 4 1994, as provided in the grant agreement under subsection (e) of this  
 5 section, for the Government share of the construction costs of the  
 6 project.

7 (2) The grant agreement under subsection (e) of this section shall provide  
 8 that for the 3d year of revenue operations of the project, the Secretary shall  
 9 pay from amounts provided under this section the Government share of op-  
 10 erating costs in an amount equal to the lesser of 50 percent of the deficit  
 11 incurred in operating the project in that year or \$300,000.

12 (3) Amounts not expended under paragraph (1)(A) of this subsection are  
 13 available for the Government share of costs described in paragraph (1)(B)  
 14 and (C) of this subsection.

15 (4) Amounts under paragraph (1)(B) and (C) of this subsection remain  
 16 available until expended.

17 (i) GOVERNMENT'S SHARE OF COSTS.—The Government share of the  
 18 cost of constructing the project is 80 percent of the net cost of the project.

19 (j) PROJECT NOT SUBJECT TO MAJOR CAPITAL INVESTMENT POLICY.—  
 20 The project is not subject to the major capital investment policy of the Fed-  
 21 eral Transit Administration.

22 (k) REPORT.—Not later than January 30, 1993, and each year after that  
 23 date, the Secretary shall submit to Congress a report on the progress and  
 24 results of the project.

### 25 **§ 5321. Crime prevention and security**

26 The Secretary of Transportation may make capital grants from amounts  
 27 available under section 5338 of this title to mass transportation systems for  
 28 crime prevention and security. This chapter does not prevent the financing  
 29 of a project under this section when a local governmental authority other  
 30 than the grant applicant has law enforcement responsibilities.

### 31 **§ 5322. Human resource programs**

32 The Secretary of Transportation may undertake, or make grants and con-  
 33 tracts for, programs that address human resource needs as they apply to  
 34 mass transportation activities. A program may include—

35 (1) an employment training program;

36 (2) an outreach program to increase minority and female employ-  
 37 ment in mass transportation activities;

38 (3) research on mass transportation personnel and training needs;  
 39 and

40 (4) training and assistance for minority business opportunities.

1   **§ 5323. General provisions on assistance**

2       (a) INTERESTS IN PROPERTY.—(1) Financial assistance provided under  
3 this chapter to a State or a local governmental authority may be used to  
4 acquire an interest in, or buy property of, a private mass transportation  
5 company, for a capital project for property acquired from a private mass  
6 transportation company after July 9, 1964, or to operate mass transpor-  
7 tation equipment or a mass transportation facility in competition with, or  
8 in addition to, transportation service provided by an existing mass transpor-  
9 tation company, only if—

10           (A) the Secretary of Transportation finds the assistance is essential  
11 to a program of projects required under sections 5303–5306 of this  
12 title;

13           (B) the Secretary of Transportation finds that the program, to the  
14 maximum extent feasible, provides for the participation of private mass  
15 transportation companies;

16           (C) just compensation under State or local law will be paid to the  
17 company for its franchise or property; and

18           (D) the Secretary of Labor certifies that the assistance complies with  
19 section 5333(b) of this title.

20       (2) A governmental authority may not use financial assistance of the  
21 United States Government to acquire land, equipment, or a facility used in  
22 mass transportation from another governmental authority in the same geo-  
23 graphic area.

24       (b) NOTICE AND PUBLIC HEARING.—(1) An application for a grant or  
25 loan under this chapter (except section 5307) for a capital project that will  
26 affect substantially a community, or the mass transportation service of a  
27 community, must include a certificate of the applicant that the applicant  
28 has—

29           (A) provided an adequate opportunity for a public hearing with ade-  
30 quate prior notice;

31           (B) held that hearing unless no one with a significant economic, so-  
32 cial, or environmental interest requested one;

33           (C) considered the economic, social, and environmental effects of the  
34 project; and

35           (D) found that the project is consistent with official plans for devel-  
36 oping the urban area.

37       (2) Notice of a hearing under this subsection shall include a concise de-  
38 scription of the proposed project and shall be published in a newspaper of  
39 general circulation in the geographic area the project will serve. If a hearing  
40 is held, a copy of the transcript of the hearing shall be submitted with the  
41 application.

(c) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter (except section 5307) after September 30, 1989, may be obligated or expended to acquire a new bus model only if a bus of the model has been tested at the facility established under section 5318 of this title.

(d) BUYING AND OPERATING BUSES.—(1) Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of mass transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled mass transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

(2) On receiving a complaint about a violation of an agreement, the Secretary of Transportation shall investigate and decide whether a violation has occurred. If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement. In addition to a remedy specified in the agreement, the Secretary may bar a recipient under this subsection or an operator from receiving further assistance when the Secretary finds a continuing pattern of violations of the agreement.

(e) BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.—The initial advertising by a State or local governmental authority for bids to acquire buses using financial assistance under this chapter (except section 5307) may include passenger seat functional specifications that are at least equal to performance specifications the Secretary of Transportation prescribes. The specifications shall be based on a finding by the State or local governmental authority of local requirements for safety, comfort, maintenance, and life cycle costs.

(f) SCHOOLBUS TRANSPORTATION.—(1) Financial assistance under this chapter may be used for a capital project, or to operate mass transportation equipment or a mass transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system;

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates; and

(C) to a State or local governmental authority if it or a direct predecessor in interest from which it acquired the duty of transporting school children and personnel, and facilities to transport them, provided schoolbus transportation at any time after November 25, 1973, but before November 26, 1974.

(2) An applicant violating an agreement under this subsection may not receive other financial assistance under this chapter.

(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 103(e)(4) and 142(a) or (c) of title 23. However, subsection (f)(1)(C) of this section applies to sections 103(e)(4) and 142(a) or (c) only if schoolbus transportation was provided at any time after August 12, 1972, but before August 13, 1973.

(h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used to—

(1) pay ordinary governmental or nonproject operating expenses; or

(2) support a procurement that uses an exclusionary or discriminatory specification.

(i) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—A Government grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment required by the Clean Air Act (42 U.S.C. 7401 et seq.) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is for 90 percent of the net project cost of the equipment that is attributable to complying with those Acts. The Secretary of Transportation, through practicable administrative procedures, may determine the costs attributable to that equipment.

(j) BUY AMERICAN.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) applying paragraph (1) would be inconsistent with the public interest;

(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;



(C) when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and

(ii) final assembly of the rolling stock has occurred in the United States; or

(D) including domestic material will increase the cost of the overall project by more than 25 percent.

(3) In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

(4) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

(5) A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations, to receive a contract or subcontract made with amounts authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914) if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) affixed a “Made in America” label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

(B) represented that goods described in clause (A) of this paragraph were produced in the United States.

(6) The Secretary of Transportation may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

(7) Not later than January 1, 1995, the Secretary of Transportation shall submit to Congress a report on purchases from foreign entities waived under paragraph (2) of this subsection in the fiscal years ending September

30, 1992, and September 30, 1993. The report shall indicate the dollar value of items for which waivers were granted.

(k) APPLICATION OF SECTION 135 OF TITLE 23—The planning and programming requirements of section 135 of title 23 apply to a grant made under sections 5307–5311 of this title.

**§5324. Limitations on discretionary and special needs grants and loans**

(a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be provided under section 5309 of this title only if the Secretary of Transportation decides that—

(1) an adequate relocation program is being carried out for families displaced by a project; and

(2) an equal number of decent, safe, and sanitary dwellings are being, or will be, provided to those families in the same area or in another area generally not less desirable for public utilities and public and commercial facilities, at rents or prices within the financial means of those families, and with reasonable access to their places of employment.

(b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In carrying out section 5301(e) of this title, the Secretary of Transportation shall cooperate and consult with the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior and the Council on Environmental Quality on each project that may have a substantial impact on the environment.

(2) In carrying out section 5309 of this title, the Secretary of Transportation shall review each transcript of a hearing submitted under section 5323(b) of this title to establish that an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest and that the project application includes a statement on—

(A) the environmental impact of the proposal;

(B) adverse environmental effects that cannot be avoided;

(C) alternatives to the proposal; and

(D) irreversible and irretrievable impacts on the environment.

(3)(A) The Secretary of Transportation may approve an application for financial assistance under section 5309 of this title only if the Secretary makes written findings, after reviewing the application and any hearings held before a State or local governmental authority under section 5323(b) of this title, that—

(i) an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest;

(ii) the preservation and enhancement of the environment, and the interest of the community in which a project is located, were considered; and

(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(B) If a hearing has not been conducted or the Secretary of Transportation decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(C) A finding of the Secretary of Transportation under subparagraph (A) of this paragraph shall be made a matter of public record.

(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—The Secretary of Transportation may not regulate the operation of a mass transportation system for which a grant is made under section 5309 of this title and, after a grant is made, may not regulate any charge for the system. However, the Secretary may require the local governmental authority, corporation, or association to comply with any undertaking provided by it related to its grant application.

#### **§ 5325. Contract requirements**

(a) NONCOMPETITIVE BIDDING.—A capital project or improvement contract for which a grant or loan is made under this chapter, if the contract is not made through competitive bidding, shall provide that records related to the contract shall be made available to the Secretary of Transportation and the Comptroller General, or an officer or employee of the Secretary or Comptroller General, when conducting an audit and inspection.

(b) ACQUIRING ROLLING STOCK.—A recipient of financial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(c) PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.—A recipient of a grant under section 5307 of this title procuring an associated capital maintenance item under section 5307(b) may make a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

(1) the manufacturer or supplier is the only source for the item; and

(2) the price of the item is no more than the price similar customers pay for the item.

(d) MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS.—

A contract for program management, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which a grant or loan is made under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

#### **§ 5326. Special procurements**

(a) TURNKEY SYSTEM PROJECTS.—(1) In this subsection, “turnkey system project” means a project under which a recipient makes a contract with a seller, firm, or consortium of firms to construct a mass transportation system that meets specific performance criteria and that the seller operates for a period of time.

(2) To advance new technologies and lower the cost of a capital project for a new mass transportation system, the Secretary of Transportation shall allow solicitation for a turnkey system project to be financed under this chapter to be awarded conditionally before United States Government requirements have been met on the project if the award is made without prejudice to carrying out those requirements. Government financial assistance under this chapter may be made available for the project after the recipient complies with Government requirements.

(3) To develop regulations applying generally to turnkey system projects, the Secretary may approve at least 2 projects for an initial demonstration phase. The results of the demonstration projects (and other projects using this procurement method on December 18, 1991) shall be considered in developing guidelines to carry out this subsection.

(b) MULTIYEAR ROLLING STOCK.—(1) A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

(2) The Secretary shall allow at least 2 recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder when the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs. Not later than March 17, 1992, the Secretary shall—

(1) make appropriate changes in existing procedures to make the policy stated in this subsection readily practicable for all mass transportation authorities; and

(2) prescribe guidance that clarifies and carries out the policy.

#### **§ 5327. Project management oversight**

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts; and

1           (12) the recipient's commitment to submit a project budget and  
2           project schedule to the Secretary each month.

3           (b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later  
4           than 60 days after it is submitted. If the approval cannot be completed  
5           within 60 days, the Secretary shall notify the recipient, explain the reasons  
6           for the delay, and estimate the additional time that will be required.

7           (2) The Secretary shall inform the recipient of the reasons when a plan  
8           is disapproved.

9           (c) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—(1) The Secretary  
10          may use not more than .5 percent of amounts made available for a fiscal  
11          year to carry out section 5307, 5309, or 5311 of this title, an interstate  
12          transfer mass transportation project under section 103(e)(4) of title 23 as  
13          in effect on September 30, 1991, or a project under the National Capital  
14          Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320) to make  
15          a contract to oversee the construction of a major project under section  
16          5307, 5309, 5311, or 103(e)(4) or that Act. The Secretary may use when  
17          necessary not more than an additional .25 percent of amounts made avail-  
18          able in a fiscal year to carry out a major project under section 5307 to  
19          make a contract to oversee the construction of the project.

20          (2) The Secretary may use amounts available under paragraph (1) of this  
21          subsection to make contracts for safety, procurement, management, and fi-  
22          nancial compliance reviews and audits of a recipient of amounts under para-  
23          graph (1). Subsections (a), (b), and (e) of this section do not apply to con-  
24          tracts under this paragraph.

25          (3) The Government shall pay the entire cost of carrying out a contract  
26          under this subsection.

27          (d) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under  
28          this chapter or section 14(b) of the National Capital Transportation Act of  
29          1969 (Public Law 91-143, 83 Stat. 320), as added by section 2 of the Na-  
30          tional Capital Transportation Amendments of 1979 (Public Law 96-184, 93  
31          Stat. 1320), shall provide the Secretary and a contractor the Secretary  
32          chooses under subsection (c) of this section with access to the construction  
33          sites and records of the recipient when reasonably necessary.

34          (e) REGULATIONS.—The Secretary shall prescribe regulations necessary  
35          to carry out this section. The regulations shall include—

36                  (1) a definition of "major capital project" for subsection (c) of this  
37                  section that excludes a project to acquire rolling stock or to maintain  
38                  or rehabilitate a vehicle; and

39                  (2) a requirement that oversight begin during the preliminary engi-  
40                  neering stage of a project, unless the Secretary finds it more appro-  
41                  priate to begin the oversight during another stage of the project, to

maximize the transportation benefits and cost savings associated with project management oversight.

**§ 5328. Project review**

(a) SCHEDULE.—(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant in alternatives analysis and in preparing a draft environmental impact statement and shall approve the draft for circulation not later than 45 days after the applicant submits the draft to the Secretary.

(2) After the draft is circulated and not later than 30 days after the applicant selects a locally preferred alternative, the Secretary shall allow the project to advance to the preliminary engineering stage if the Secretary finds the project is consistent with section 5309(e)(1)–(6) of this title.

(3) The Secretary shall issue a record of decision and allow a project to advance to the final design stage of construction not later than 120 days after the final environmental impact statement for the project is completed.

(4) The Secretary shall make a full financing grant agreement under section 5309 of this title for a project not later than 120 days after the project enters the final design stage of construction. The agreement shall provide for a United States Government share of the construction cost at least equal to the Government share estimated in the Secretary's most recent report required under section 5309(m)(2) of this title or an update of the report unless the applicant requests otherwise.

(b) ALLOWED DELAYS.—(1) Advancement of a project under the time requirements of subsection (a) of this section may be delayed only—

(A) for the time the applicant may request; or

(B) during the time the Secretary finds, after reasonable notice and an opportunity for comment, that the applicant, for reasons attributable only to the applicant, has not complied substantially with the provisions of this chapter applicable to the project.

(2) Not more than 10 days after imposing a delay under paragraph (1)(B) of this subsection, the Secretary shall give the applicant a written statement explaining the reasons for the delay and describing actions the applicant must take to end the delay.

(3) At least once every 6 months, the Secretary shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate on each situation in which the Secretary has not met a time requirement of subsection (a) of this section or delayed a time requirement under paragraph (1)(B) of this subsection. The report shall explain the reasons for the

1 delay and include a plan for achieving timely completion of the Secretary's  
2 review.

3 (c) PROGRAM OF INTERRELATED PROJECTS.—(1) In this subsection, a  
4 program of interrelated projects includes the following:

5 (A) the New Jersey Urban Core Project (as defined in title III of  
6 the Intermodal Surface Transportation Efficiency Act of 1991 (Public  
7 Law 102–240, 105 Stat. 2087)).

8 (B) the San Francisco Bay Area Rail Extension Program, consisting  
9 of at least an extension of the San Francisco Bay Area Rapid Transit  
10 District to the San Francisco International Airport (Phase 1a to Colma  
11 and Phase 1b to San Francisco Airport), the Santa Clara County  
12 Transit District Tasman Corridor Project, a program element des-  
13 ignated by a change to the Metropolitan Transportation Commission  
14 Resolution No. 1876, and a program element financed completely with  
15 non-Government amounts, including the BART Warm Springs Exten-  
16 sion, Dublin Extension, and West Pittsburg Extension.

17 (C) the Los Angeles Metro Rail Minimum Operable Segment-3 Pro-  
18 gram, consisting of 7 stations and approximately 11.6 miles of heavy  
19 rail subway on the following lines:

20 (i) one line running west and northwest from the Hollywood/  
21 Vine station to the North Hollywood station, with 2 intermediate  
22 stations.

23 (ii) one line running west from the Wilshire/Western station to  
24 the Pico/San Vicente station, with one intermediate station.

25 (iii) the East Side Extension, consisting of an initial line of ap-  
26 proximately 3 miles, with at least 2 stations, beginning at Union  
27 Station and running generally east.

28 (D) the Baltimore-Washington Transportation Improvement Pro-  
29 gram, consisting of 3 extensions of the Baltimore Light Rail to Hunt  
30 Valley, Penn Station, and Baltimore-Washington Airport, MARC exten-  
31 sions to Frederick and Waldorf, Maryland, and an extension of the  
32 Washington Subway system to Largo, Maryland.

33 (E) the Tri-County Metropolitan Transportation District of Oregon  
34 Westside Light Rail Program, consisting of the locally preferred alter-  
35 native for the Westside Light Rail Project, including system related  
36 costs, contained in the Department of Transportation and Related  
37 Agencies Appropriations Act, 1991 (Public Law 101–516, 104 Stat.  
38 2155), and defined in House Report 101–584, and the Hillsboro exten-  
39 sion to the Westside Light Rail Project contained in that Act.

40 (F) the Queens Local/Express Connector Program, consisting of the  
41 locally preferred alternative for the connection of the 63d Street tunnel



extension to the Queens Boulevard lines, the bell-mouth part of the connector that will allow for future access by commuter rail trains and other subway lines to the 63d Street tunnel extension, planning elements for connecting the upper and lower levels to commuter and subway lines in Long Island City, and planning elements for providing a connector for commuter rail transportation to the East side of Manhattan and subway lines to the proposed Second Avenue subway.

(G) the Dallas Area Rapid Transit Authority light rail elements of the New System Plan, consisting of the locally preferred alternative for the South Oak Cliff corridor, the South Oak Cliff corridor extension-Camp Wisdom, the West Oak Cliff corridor-Westmoreland, the North Central corridor-Park Lane, the North Central corridor-Richardson, Plano, and Garland extensions, the Pleasant Grove corridor-Buckner, and the Carrollton corridors-Farmers Branch and Las Colinas terminal.

(H) other programs designated by law or the Secretary.

(2) Consistent with the time requirements of subsection (a) of this section or as otherwise provided by law, the Secretary shall make at least one full financing grant agreement for each program described in paragraph (1) of this subsection. The agreement shall include commitments to advance each of the applicant's program elements (in the program of interrelated projects) through the appropriate program review stages as provided in subsection (a) or as otherwise provided by law and to provide Government financing for each element. The agreement may be changed to include design and construction of a particular element.

(3) When reviewing a project in a program of interrelated projects, the Secretary shall consider the local financial commitment, transportation effectiveness, and other assessment factors of all program elements to the extent consideration expedites carrying out the project.

(4) Including a program element not financed by the Government in a program of interrelated projects does not impose Government requirements that otherwise would not apply to the element.

### **§ 5329. Investigation of safety hazards**

(a) GENERAL.—The Secretary of Transportation may investigate a condition in equipment, a facility, or an operation financed under this chapter that the Secretary believes causes a serious hazard of death or injury to establish the nature and extent of the condition and how to eliminate or correct it. If the Secretary establishes that a condition causes a hazard, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for correcting it. The Secretary may

1 withhold further financial assistance under this chapter until a plan is ap-  
 2 proved and carried out.

3 (b) REPORT.—Not later than June 15, 1992, the Secretary shall submit  
 4 to Congress a report containing—

5 (1) a description of actions taken to identify and investigate condi-  
 6 tions in a facility, equipment, or way of operating as part of the find-  
 7 ings and decisions required of the Secretary in providing a grant or  
 8 loan under this chapter;

9 (2) a description of actions of the Secretary to correct or eliminate,  
 10 as a requirement for making an amount available through a grant or  
 11 loan under this chapter, a condition found to create a serious hazard  
 12 of death or injury;

13 (3) a summary of all passenger-related deaths and injuries resulting  
 14 from an unsafe condition in a facility, equipment, or way of operating  
 15 a facility or equipment at least partly financed under this chapter;

16 (4) a summary of all employee-related deaths and injuries resulting  
 17 from an unsafe condition in a facility, equipment, or way of operating  
 18 a facility or equipment at least partly financed under this chapter;

19 (5) a summary of action of the Secretary to correct or eliminate the  
 20 unsafe condition to which the deaths and injuries referred to in clauses  
 21 (3) and (4) of this subsection were attributed;

22 (6) a summary of actions of the Secretary to alert mass transpor-  
 23 tation operators of the nature of the unsafe condition found to create  
 24 a serious hazard of death or injury; and

25 (7) recommendations of the Secretary to Congress of any legislative  
 26 or administrative actions necessary to ensure that all recipients of  
 27 amounts under this chapter will undertake the best way available to  
 28 correct or eliminate hazards of death or injury, including—

29 (A) a timetable for undertaking actions;

30 (B) an estimate of the capital and operating cost to take the  
 31 actions; and

32 (C) minimum standards for establishing and carrying out safety  
 33 plans by recipients of amounts under this chapter.

34 **§ 5330. Withholding amounts for noncompliance with safety**  
 35 **requirements**

36 (a) APPLICATION.—This section applies only to States that have rail fixed  
 37 guideway mass transportation systems not subject to regulation by the Fed-  
 38 eral Railroad Administration.

39 (b) GENERAL AUTHORITY.—The Secretary of Transportation may with-  
 40 hold not more than 5 percent of the amount required to be appropriated  
 41 for use in a State or urbanized area in the State under section 5307 of this

1 title for a fiscal year beginning after September 30, 1994, if the State in  
 2 the prior fiscal year has not met the requirements of subsection (c) of this  
 3 section and the Secretary decides the State is not making an adequate effort  
 4 to comply with subsection (c).

5 (c) STATE REQUIREMENTS.—A State meets the requirements of this sec-  
 6 tion if the State—

7 (1) establishes and is carrying out a safety program plan for each  
 8 fixed guideway mass transportation system in the State that establishes  
 9 at least safety requirements, lines of authority, levels of responsibility  
 10 and accountability, and methods of documentation for the system; and

11 (2) designates a State authority as having responsibility—

12 (A) to require, review, approve, and monitor the carrying out of  
 13 each plan;

14 (B) to investigate hazardous conditions and accidents on the  
 15 systems; and

16 (C) to require corrective action to correct or eliminate those  
 17 conditions.

18 (d) MULTISTATE INVOLVEMENT.—When more than one State is subject  
 19 to this section in connection with a single mass transportation authority, the  
 20 affected States may designate an entity (except the mass transportation au-  
 21 thority) to ensure uniform safety standards and enforcement and to meet  
 22 the requirements of subsection (c) of this section.

23 (e) AVAILABILITY OF WITHHELD AMOUNTS.—(1) An amount withheld  
 24 under subsection (b) of this section remains available for apportionment for  
 25 use in the State until the end of the 2d fiscal year after the fiscal year for  
 26 which the amount may be appropriated.

27 (2) If a State meets the requirements of subsection (c) of this section be-  
 28 fore the last day of the period for which an amount withheld under sub-  
 29 section (b) of this section remains available under paragraph (1) of this sub-  
 30 section, the Secretary, on the first day on which the State meets the re-  
 31 quirements, shall apportion to the State the amount withheld that remains  
 32 available for apportionment for use in the State. An amount apportioned  
 33 under this paragraph remains available until the end of the 3d fiscal year  
 34 after the fiscal year in which the amount is apportioned. An amount not  
 35 obligated at the end of the 3-year period shall be apportioned for use in  
 36 other States under section 5336 of this title.

37 (3) If a State does not meet the requirements of subsection (c) of this  
 38 section at the end of the period for which an amount withheld under sub-  
 39 section (b) of this section remains available under paragraph (1) of this sub-  
 40 section, the amount shall be apportioned for use in other States under sec-  
 41 tion 5336 of this title.

(f) REGULATIONS.—Not later than December 18, 1992, the Secretary shall prescribe regulations stating the requirements for complying with subsection (c) of this section.

**§ 5331. Alcohol and controlled substances testing**

(a) DEFINITIONS.—In this section—

(1) “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) whose use the Secretary of Transportation decides has a risk to transportation safety.

(2) “person” includes any entity organized or existing under the laws of the United States, a State, territory, or possession of the United States, or a foreign country.

(3) “mass transportation” means any form of mass transportation, except a form the Secretary decides is covered adequately, for employee alcohol and controlled substances testing purposes, under subchapter III of chapter 201 or section 31306 of this title.

(b) TESTING PROGRAM FOR MASS TRANSPORTATION EMPLOYEES.—

(1)(A) In the interest of mass transportation safety, the Secretary of Transportation shall prescribe regulations not later than October 28, 1992, that establish a program requiring mass transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4) of title 23 to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of mass transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of such a mass transportation employee be conducted when loss of human life occurs in an accident involving mass transportation; and

(B) may require that post-accident testing of such a mass transportation employee be conducted when bodily injury or significant property damage occurs in any other serious accident involving mass transportation.

(c) DISQUALIFICATIONS FOR USE.—(1) When the Secretary of Transportation considers it appropriate, the Secretary shall require disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) of this section who is found—

(A) to have used or been impaired by alcohol when on duty; or

(B) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or regulation.

(2) This section does not supersede any penalty applicable to a mass transportation employee under another law.

(d) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering,

1 so that if the individual's confirmation test results are positive the indi-  
2 vidual has an opportunity to have the retained part tested by a 2d con-  
3 firmation test done independently at another certified laboratory if the  
4 individual requests the 2d confirmation test not later than 3 days after  
5 being advised of the results of the first confirmation test;

6 (6) ensure appropriate safeguards for testing to detect and quantify  
7 alcohol in breath and body fluid samples, including urine and blood,  
8 through the development of regulations that may be necessary and in  
9 consultation with the Secretary of Health and Human Services;

10 (7) provide for the confidentiality of test results and medical infor-  
11 mation (except information about alcohol or a controlled substance) of  
12 employees, except that this clause does not prevent the use of test re-  
13 sults for the orderly imposition of appropriate sanctions under this sec-  
14 tion; and

15 (8) ensure that employees are selected for tests by nondiscriminatory  
16 and impartial methods, so that no employee is harassed by being treat-  
17 ed differently from other employees in similar circumstances.

18 (e) REHABILITATION.—The Secretary of Transportation shall prescribe  
19 regulations establishing requirements for rehabilitation programs that pro-  
20 vide for the identification and opportunity for treatment of any mass trans-  
21 portation employee referred to in subsection (b)(1) of this section who is  
22 found to have used alcohol or a controlled substance in violation of law or  
23 a Government regulation. The Secretary shall decide on the circumstances  
24 under which employees shall be required to participate in a program. This  
25 subsection does not prevent a mass transportation operation from establish-  
26 ing a program under this section in cooperation with another mass trans-  
27 portation operation.

28 (f) RELATIONSHIP TO OTHER LAWS, REGULATIONS, STANDARDS, AND  
29 ORDERS.—(1) A State or local government may not prescribe, issue, or con-  
30 tinue in effect a law, regulation, standard, or order that is inconsistent with  
31 regulations prescribed under this section. However, a regulation prescribed  
32 under this section does not preempt a State criminal law that imposes sanc-  
33 tions for reckless conduct leading to loss of life, injury, or damage to prop-  
34 erty.

35 (2) In prescribing regulations under this section, the Secretary of Trans-  
36 portation—

37 (A) shall establish only requirements that are consistent with inter-  
38 national obligations of the United States; and

39 (B) shall consider applicable laws and regulations of foreign coun-  
40 tries.

(3) This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by mass transportation employees.

(g) INELIGIBILITY FOR ASSISTANCE.—A person is not eligible for financial assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4) of title 23 if the person is required, under regulations the Secretary of Transportation prescribes under this section, to establish a program of alcohol and controlled substances testing and does not establish the program.

#### **§ 5332. Nondiscrimination**

(a) DEFINITION.—In this section, “person” includes a governmental authority, political subdivision, authority, legal representative, trust, unincorporated organization, trustee, trustee in bankruptcy, and receiver.

(b) PROHIBITIONS.—A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, creed, national origin, sex, or age.

(c) COMPLIANCE.—(1) The Secretary of Transportation shall take affirmative action to ensure compliance with subsection (b) of this section.

(2) When the Secretary decides that a person receiving financial assistance under this chapter is not complying with subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the person of the decision and require action be taken to ensure compliance with subsection (b).

(d) AUTHORITY OF SECRETARY FOR NONCOMPLIANCE.—If a person does not comply with subsection (b) of this section within a reasonable time after receiving notice, the Secretary shall—

(1) direct that no further financial assistance of the United States Government under this chapter be provided to the person;

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought;

(3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(4) take any other action provided by law.

(e) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action for appropriate relief when—

(1) a matter is referred to the Attorney General under subsection (d)(2) of this section; or

(2) the Attorney General believes a person is engaged in a pattern or practice in violation of this section.

(f) APPLICATION AND RELATIONSHIP TO OTHER LAWS.—This section applies to an employment or business opportunity and is in addition to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

#### **§ 5333. Labor standards**

(a) PREVAILING WAGES REQUIREMENT.—The Secretary of Transportation shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed with a grant or loan under this chapter be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The Secretary of Transportation may approve a grant or loan only after being assured that required labor standards will be maintained on the construction work. For a labor standard under this subsection, the Secretary of Labor has the same duties and powers stated in Reorganization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(b) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) As a condition of financial assistance under sections 5307–5312 of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312 shall specify the arrangements.

(2) Arrangements under this subsection shall include—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

#### **§ 5334. Administrative**

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—



(1) prescribe terms for a project under sections 5307 and 5309–5311 of this title (except terms the Secretary of Labor prescribes under section 5333(b) of this title);

(2) sue and be sued;

(3) foreclose on property or bring a civil action to protect or enforce a right conferred on the Secretary of Transportation by law or agreement;

(4) buy property related to a loan under this chapter;

(5) agree to pay an annual amount in place of a State or local tax on real property acquired or owned under this chapter;

(6) sell, exchange, or lease property, a security, or an obligation;

(7) obtain loss insurance for property and assets the Secretary of Transportation holds;

(8) consent to a modification in an agreement under this chapter; and

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter.

(b) PROCEDURES FOR PRESCRIBING REGULATIONS.—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual regulatory agenda that lists regulatory activities of the Federal Transit Administration. The Secretary shall submit the agenda to the Committees on Public Works and Transportation and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

(2) Except for emergency regulations, the Secretary of Transportation shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary because of the routine nature or insignificant impact of the regulation or that an emergency regulation should be issued. The Secretary may extend the 60-day period if the Secretary decides the period is insufficient to allow diligent individuals to prepare comments or that other circumstances justify an extension.

(3) An emergency regulation ends 120 days after it is issued.

(4) The Secretary of Transportation shall comply with this section (except subsections (h) and (i)) and sections 5323(a)(2), (c) and (e), 5324(c), and

1 5325 of this title when proposing or carrying out a regulation governing an  
 2 activity under this chapter, except for a routine matter or a matter with  
 3 no significant impact.

4 (c) BUDGET PROGRAM AND SET OF ACCOUNTS.—The Secretary of  
 5 Transportation shall—

6 (1) submit each year a budget program as provided in section 9103  
 7 of title 31; and

8 (2) maintain a set of accounts the Comptroller General shall audit  
 9 under chapter 35 of title 31.

10 (d) DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of  
 11 Transportation shall deposit amounts made available to the Secretary under  
 12 this chapter in a checking account in the Treasury. Receipts, assets, and  
 13 amounts obtained or held by the Secretary to carry out this chapter are  
 14 available for administrative expenses to carry out this chapter.

15 (e) BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial trans-  
 16 action of the Secretary of Transportation under this chapter and a related  
 17 voucher are binding on all officers and employees of the United States Gov-  
 18 ernment.

19 (f) DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law  
 20 related to the Government acquiring, using, or disposing of real property,  
 21 the Secretary of Transportation may deal with property acquired under sub-  
 22 section (a)(3) or (4) of this section in any way. However, this subsection  
 23 does not—

24 (1) deprive a State or political subdivision of a State of jurisdiction  
 25 of the property; or

26 (2) impair the civil rights, under the laws of a State or political sub-  
 27 division of a State, of an inhabitant of the property.

28 (g) TRANSFER OF ASSETS NO LONGER NEEDED.—(1) If a recipient of  
 29 assistance under this chapter decides an asset acquired under this chapter  
 30 at least in part with that assistance is no longer needed for the purpose  
 31 for which it was acquired, the Secretary of Transportation may authorize  
 32 the recipient to transfer the asset to a local governmental authority to be  
 33 used for a public purpose with no further obligation to the Government. The  
 34 Secretary may authorize a transfer for a public purpose other than mass  
 35 transportation only if the Secretary decides—

36 (A) the asset will remain in public use for at least 5 years after the  
 37 date the asset is transferred;

38 (B) there is no purpose eligible for assistance under this chapter for  
 39 which the asset should be used;

40 (C) the overall benefit of allowing the transfer is greater than the  
 41 interest of the Government in liquidation and return of the financial

1 interest of the Government in the asset, after considering fair market  
2 value and other factors; and

3 (D) through an appropriate screening or survey process, that there  
4 is no interest in acquiring the asset for Government use if the asset  
5 is a facility or land.

6 (2) A decision under paragraph (1) of this section must be in writing and  
7 include the reason for the decision.

8 (3) This subsection is in addition to another law related to using and dis-  
9 posing of a facility or equipment under an assistance agreement.

10 (h) TRANSFER OF AMOUNTS AND NON-GOVERNMENT SHARE.—(1)  
11 Amounts made available for a mass transportation project under title 23  
12 shall be transferred to and administered by the Secretary of Transportation  
13 under this chapter. Amounts made available for a highway project under  
14 this chapter shall be transferred to and administered by the Secretary under  
15 title 23.

16 (2) The provisions of title 23 related to the non-Government share apply  
17 to amounts under title 23 used for mass transportation projects. The provi-  
18 sions of this chapter related to the non-Government share apply to amounts  
19 under this chapter used for highway projects.

20 (i) AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOP-  
21 MENT.—The Secretary of Housing and Urban Development shall—

22 (1) carry out section 5312(a) and (b)(1) of this title related to—

23 (A) urban transportation systems and planned development of  
24 urban areas; and

25 (B) the role of transportation planning in overall urban plan-  
26 ning; and

27 (2) advise and assist the Secretary of Transportation in making find-  
28 ings under section 5323(a)(1)(A) of this title.

29 (j) RELATIONSHIP TO OTHER LAWS.—(1) Section 9107(a) of title 31 ap-  
30 plies to the Secretary of Transportation under this chapter.

31 (2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a con-  
32 tract for more than \$1,000 for services or supplies related to property ac-  
33 quired under this chapter.

### 34 **§ 5335. Reports and audits**

35 (a) REPORTING SYSTEM AND UNIFORM SYSTEM OF ACCOUNTS AND  
36 RECORDS.—(1) To help meet the needs of individual mass transportation  
37 systems, the United States Government, State and local governments, and  
38 the public for information on which to base mass transportation service  
39 planning, the Secretary of Transportation shall maintain a reporting sys-  
40 tem, by uniform categories, to accumulate mass transportation financial and  
41 operating information and a uniform system of accounts and records. The

1 reporting and uniform systems shall contain appropriate information to help  
 2 any level of government make a public sector investment decision. The Sec-  
 3 retary may request and receive appropriate information from any source.

4 (2) The Secretary may make a grant under section 5307 of this title only  
 5 if the applicant, and any person that will receive benefits directly from the  
 6 grant, are subject to the reporting and uniform systems.

7 (b) QUARTERLY REPORTS.—Not later than 30 days after the last day of  
 8 each calendar quarter, the Secretary shall submit to the Committees on  
 9 Public Works and Transportation and Appropriations of the House of Rep-  
 10 representatives and the Committees on Banking, Housing, and Urban Affairs  
 11 and Appropriations of the Senate a report on—

12 (1) obligations by State, designated recipient, and applicant made  
 13 under this chapter during the quarter;

14 (2) the balance of unobligated apportionments under this chapter on  
 15 the last day of the quarter;

16 (3) the balance of unobligated amounts under this chapter on the  
 17 last day of the quarter that the Secretary may expend;

18 (4) letters of intent issued during the quarter;

19 (5) letters of intent outstanding on the last day of the quarter; and

20 (6) grant contracts executed and reimbursement authority estab-  
 21 lished for amounts obligated for each State, designated recipient, and  
 22 applicant.

23 (c) BIENNIAL NEEDS REPORT.—In January 1993 and in January of  
 24 every 2d year after 1993, the Comptroller General shall submit to the Com-  
 25 mittee on Public Works and Transportation of the House of Representatives  
 26 and the Committee on Banking, Housing, and Urban Affairs of the Senate  
 27 a report containing an evaluation of the extent to which current mass trans-  
 28 portation needs are addressed adequately and an estimate of the future  
 29 mass transportation needs of the United States, including mass transpor-  
 30 tation needs in rural areas (particularly access to health care facilities). The  
 31 report shall include—

32 (1) an assessment of needs related to rail modernization, guideway  
 33 modernization, replacing, rehabilitating, and buying buses and related  
 34 equipment, constructing bus related facilities, and constructing new  
 35 fixed guideway systems and extensions to existing fixed guideway sys-  
 36 tems;

37 (2) a 5-year projection of maintenance and modernization needs re-  
 38 sulting from aging of existing equipment and facilities, including the  
 39 need to overhaul or replace existing bus fleets and rolling stock used  
 40 on fixed guideway systems;

(3) a 5-year projection of the need to invest in the expansion of existing mass transportation systems to meet changing economic, commuter, and residential patterns;

(4) an estimate of the level of expenditure needed to satisfy the needs identified in clauses (1)–(3) of this paragraph;

(5) an examination of existing Government, State, local, and private resources that are or reasonably can be expected to be made available to support public mass transportation; and

(6) the gap between the level of expenditure estimated under clause (4) of this paragraph and the level of resources identified under clause (5) of this paragraph that are available to meet the needs.

(d) BIENNIAL TRANSFERABILITY REPORT.—In January 1993 and in January of every 2d year after 1993, the Comptroller General shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on carrying out section 5307(b)(5) of this title. The report shall—

(1) identify, by State, the amount of mass transportation money transferred for non-mass transportation purposes under section 5307(b)(5) of this title during the prior fiscal year;

(2) include an assessment of the impact of the transfers on the mass transportation needs of individuals and communities in the State, including the impact on—

(A) the State's ability to meet the mass transportation needs of elderly individuals and individuals with disabilities;

(B) efforts to meet the objectives of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(C) the State's efforts to extend public mass transportation services to unserved rural areas; and

(3) examine the relative levels of Government mass transportation assistance and services in urban and rural areas in the fiscal year that ended September 30, 1991, and the extent to which the assistance and service has changed in later fiscal years because of mass transportation resources made available under this chapter and the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914).

### **§ 5336. Apportionment of appropriations for block grants**

(a) BASED ON URBANIZED AREA POPULATION.—Of the amount made available or appropriated under section 5338(f) of this title—

(1) 9.32 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the latest United States Government census; and

(B) 50 percent of the total amount apportioned multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile; and

(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section.

(b) BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-MILES, AND PASSENGER-MILES.—(1) In this subsection, “fixed guideway revenue vehicle-miles” and “fixed guideway route-miles” include ferry boat operations directly or under contract by the designated recipient.

(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway revenue vehicle-miles attributable to the area, as established by the Secretary of Transportation, divided by the total number of all fixed guideway revenue vehicle-miles attributable to all areas; and

(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway route-miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway route-miles attributable to all areas.

(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) the number of fixed guideway vehicle passenger-miles traveled multiplied by the number of fixed guideway vehicle passenger-

1 miles traveled for each dollar of operating cost in an area; divided  
2 by

3 (ii) the total number of fixed guideway vehicle passenger-miles  
4 traveled multiplied by the total number of fixed guideway vehicle  
5 passenger-miles traveled for each dollar of operating cost in all  
6 areas.

7 (C) An urbanized area with a population of at least 750,000 in  
8 which commuter rail transportation is provided shall receive at least  
9 .75 percent of the total amount apportioned under this subsection.

10 (D) Under subparagraph (A) of this paragraph, fixed guideway reve-  
11 nue vehicle- or route-miles, and passengers served on those miles, in  
12 an urbanized area with a population of less than 200,000, where the  
13 miles and passengers served otherwise would be attributable to an ur-  
14 banized area with a population of at least 1,000,000 in an adjacent  
15 State, are attributable to the governmental authority in the State in  
16 which the urbanized area with a population of less than 200,000 is lo-  
17 cated. The authority is deemed an urbanized area with a population of  
18 at least 200,000 if the authority makes a contract for the service.

19 (E) A recipient's apportionment under subparagraph (A)(i) of this  
20 paragraph may not be reduced if the recipient, after satisfying the Sec-  
21 retary of Transportation that energy or operating efficiencies would be  
22 achieved, reduces revenue vehicle-miles but provides the same frequency  
23 of revenue service to the same number of riders.

24 (c) BASED ON BUS REVENUE VEHICLE-MILES AND PASSENGER-  
25 MILES.—Of the amount apportioned under subsection (a)(2) of this section,  
26 66.71 percent shall be apportioned as follows:

27 (1) 90.8 percent of the total amount apportioned under this sub-  
28 section shall be apportioned as follows:

29 (A) 73.39 percent of the 90.8 percent apportioned under this  
30 paragraph shall be apportioned so that each urbanized area with  
31 a population of at least 1,000,000 is entitled to receive an amount  
32 equal to—

33 (i) 50 percent of the 73.39 percent apportioned under this  
34 subparagraph multiplied by a ratio equal to the total bus rev-  
35 enue vehicle-miles operated in or directly serving the urban-  
36 ized area divided by the total bus revenue vehicle-miles attrib-  
37 utable to all areas;

38 (ii) 25 percent of the 73.39 percent apportioned under this  
39 subparagraph multiplied by a ratio equal to the population of  
40 the area divided by the total population of all areas, as shown  
41 by the latest Government census; and

(iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—

(i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(A) the number of bus passenger-miles traveled multiplied by the number of bus passenger-miles traveled for each dollar of operating cost in an area; divided by

(B) the total number of bus passenger-miles traveled multiplied by the total number of bus passenger-miles traveled for each dollar of operating cost in all areas.

(d) OPERATING ASSISTANCE.—(1) The total amount apportioned under this section that may be used for operating assistance may not be more than—

(A) 80 percent of the total amount apportioned in the fiscal year ending September 30, 1982, under section 5(a)(1)(A), (2)(A), and (3)(A) of the Urban Mass Transportation Act of 1964 to urbanized areas with populations of at least 1,000,000;



(B) 90 percent of the total amount apportioned in that year under section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with populations of at least 200,000 but not more than 999,999;

(C) 95 percent of the total amount apportioned in that year under section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with populations of less than 200,000; or

(D) two-thirds of the total amount apportioned under this section during the first complete year an urbanized area received amounts under this section if the area first became an urbanized area under the 1980 Government census or later.

(2) Amounts apportioned under paragraph (1) of this subsection shall be increased on October 1 of each year by an amount equal to the amount applicable to each urbanized area under paragraph (1) (except increases under this paragraph), multiplied by the percentage increase in the Consumer Price Index for all-urban consumers published by the Secretary of Labor during the most recent calendar year. However, the increase may not be more than the percentage increase of amounts made available under section 5338(f) of this title in the current fiscal year and amounts made available under section 5338(f) in the prior fiscal year.

(e) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—

(1) apportion amounts appropriated under section 5338(f) of this title to carry out section 5307 of this title not later than the 10th day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and

(2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than 50,000 and amounts attributable to each State of a multistate urbanized area, on the apportionment date.

(f) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The chief executive officer of a State may expend in an urbanized area with a population of less than 200,000 an amount apportioned under this section that is not apportioned to a designated recipient as defined in section 5307(a) of this title.

(g) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5311(c) of this title or amounts apportioned to urbanized areas under this subsection. The chief executive officer may make a transfer only after consulting with responsible local officials and publicly owned operators of mass transportation in each area for which the amount originally was apportioned under this section.

(2) The chief executive officer of a State may transfer any part of the State's apportionment under section 5311(c) of this title to supplement amounts apportioned to the State under subsection (a)(1) of this section.

(3) The chief executive officer of a State may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires.

(4) A designated recipient for an urbanized area with a population of at least 200,000 may transfer a part of its apportionment under this section to the chief executive officer of a State. The chief executive officer shall distribute the transferred amounts to urbanized areas under this section.

(5) Capital and operating assistance limitations applicable to the original apportionment apply to amounts transferred under this subsection.

(h) CHANGES OF APPORTIONMENTS.—If sufficient amounts are available, the Secretary of Transportation shall change apportionments under this section between the Mass Transit Account of the Highway Trust Fund and the general fund to ensure that each recipient receives from the general fund at least as much operating assistance made available each fiscal year under this section as the recipient is eligible to receive.

(i) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned under this section may be obligated by the recipient for 3 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 3-year period, an amount that is not obligated at the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

(j) APPLICATION OF OTHER SECTIONS.—Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

(k) CERTAIN URBANIZED AREAS GRANDFATHERED.—An area designated an urbanized area under the 1980 census and not designated an urbanized area under the 1990 census for the fiscal year ending September 30, 1993, is eligible to receive—

(1) 50 percent of the amount the area would have received if the area had been an urbanized area as defined by section 5302(a)(13) of this title; and

(2) an amount equal to 50 percent of the amount that the State in which the area is located would have received if the area had been an area other than an urbanized area.

**§ 5337. Apportionment of appropriations for fixed guideway modernization**

(a) PERCENTAGE DISTRIBUTION.—The Secretary of Transportation shall apportion amounts made available for fixed guideway modernization under section 5309 of this title for each of the fiscal years ending September 30, 1993–1997, as follows:

(1) The first \$455,000,000 shall be apportioned in the following urbanized areas as follows:

(A) Baltimore, 1.84 percent.

(B) Boston, 8.56 percent.

(C) Chicago/Northwestern Indiana, 17.18 percent.

(D) Cleveland, 2.09 percent.

(E) New York, 35.57 percent.

(F) Northeastern New Jersey, 9.04 percent.

(G) Philadelphia/Southern New Jersey, 12.41 percent.

(H) San Francisco, 7.21 percent.

(I) Southwestern Connecticut, 6.10 percent.

(2) The next \$42,700,000 shall be apportioned in the following urbanized areas as follows:

(A) New York, 33.2341 percent.

(B) Northeastern New Jersey, 22.1842 percent.

(C) Philadelphia/Southern New Jersey, 5.7594 percent.

(D) San Francisco, 2.7730 percent.

(E) Pittsburgh, 31.9964 percent.

(F) New Orleans, 4.0529 percent.

(3) The next \$70,000,000 shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraphs (1) and (2) as provided in section 5336(b)(2)(A) of this title.

(B) 50 percent in other urbanized areas eligible for assistance under section 5336(b)(2)(A) of this title if the areas contain fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available and in any other urbanized area if, before the first day of the fiscal year, the area satisfies the Secretary that the area has modernization needs that cannot be met adequately with amounts received as provided in section 5336(b)(2)(A).

(4) Remaining amounts shall be apportioned in each urbanized area eligible for assistance under paragraphs (1)–(3) of this subsection as provided in section 5336(B)(2)(A).

(b) TOTAL AMOUNTS NOT AVAILABLE.—In a fiscal year in which the total amounts authorized under subsection (a)(1) and (2) of this section are

not available, the Secretary shall reduce on a proportionate basis the apportionments of all urbanized areas eligible under subsection (a)(1) or (2) to adjust for the amount not available.

(c) NEW JERSEY TRANSIT CORPORATION.—Rail modernization amounts allocated to the New Jersey Transit Corporation under this section may be spent in any urbanized area in which the New Jersey Transit Corporation operates rail transportation, regardless of which urbanized area generates the financing.

(d) AVAILABILITY OF AMOUNTS.—An amount apportioned under this section—

(1) remains available for 3 years after the fiscal year in which the amount is apportioned; and

(2) that is unobligated at the end of the 3-year period shall be reapportioned for the next fiscal year among urbanized areas eligible under subsection (a)(1)–(3) of this section using the apportionment formula of this section.

#### **§ 5338. Authorizations**

(a) FOR SECTIONS 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, AND 5334 (a) and (c) AND SECTION 103(e)(4) OF TITLE 23.—

(1) Not more than the following amounts are available from the Mass Transit Account of the Highway Trust Fund for the Secretary of Transportation to carry out sections 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, and 5334 (a) and (c) of this title:

(A) \$1,150,000,000 for the fiscal year ending September 30, 1993.

(B) \$1,190,000,000 for the fiscal year ending September 30, 1994.

(C) \$1,150,000,000 for the fiscal year ending September 30, 1995.

(D) \$1,110,000,000 for the fiscal year ending September 30, 1996.

(E) \$1,920,000,000 for the fiscal year ending September 30, 1997.

(2) In addition to amounts made available under paragraph (1) of this subsection, not more than the following amounts may be appropriated to the Secretary to carry out sections 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, and 5334 (a) and (c) of this title and substitute transit projects under section 103(e)(4) of title 23:

(A) \$2,055,000,000 for the fiscal year ending September 30, 1993.

(B) \$1,885,000,000 for the fiscal year ending September 30, 1994.

(C) \$1,925,000,000 for the fiscal year ending September 30, 1995.

(D) \$1,965,000,000 for the fiscal year ending September 30, 1996.

(E) \$2,430,000,000 for the fiscal year ending September 30, 1997.

(b) SECTION 5309.—(1) Not more than the following amounts are available from the Account for the Secretary to carry out section 5309 of this title:

(A) \$1,725,000,000 for the fiscal year ending September 30, 1993.

(B) \$1,785,000,000 for the fiscal year ending September 30, 1994.

(C) \$1,725,000,000 for the fiscal year ending September 30, 1995.

(D) \$1,665,000,000 for the fiscal year ending September 30, 1996.

(E) \$2,880,000,000 for the fiscal year ending September 30, 1997.

(2) In addition to amounts made available under paragraph (1) of this subsection, not more than the following amounts may be appropriated to the Secretary to carry out section 5309 of this title:

(A) \$305,000,000 for the fiscal year ending September 30, 1993.

(B) \$265,000,000 for the fiscal year ending September 30, 1994.

(C) \$325,000,000 for the fiscal year ending September 30, 1995.

(D) \$385,000,000 for the fiscal year ending September 30, 1996.

(E) \$20,000,000 for the fiscal year ending September 30, 1997.

(c) SECTION 5315.—The Secretary shall make available in equal amounts from amounts provided under subsections (f) and (g) of this section not more than \$3,000,000 for each of the fiscal years ending September 30, 1993–1997, to carry out section 5315 of this title.

(d) SECTION 5316.—Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for each of the fiscal years ending September 30, 1993–1997:

(1) \$250,000 to carry out section 5316(a) of this title.

(2) \$3,000,000 to carry out section 5316(b) of this title.

(3) \$1,000,000 to carry out section 5316(c) of this title.

(4) \$1,000,000 to carry out section 5316(d) of this title.

(5) \$1,000,000 to carry out section 5316(e) of this title.

(e) SECTION 5317.—(1) Not more than \$6,000,000 is available from the Fund (except the Account) for the Secretary for each of the fiscal years ending September 30, 1993–1997, to carry out section 5317 of this title.

(2) Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for making grants under section 5317(b)(5)(B) of this title:

(A) \$3,000,000 for the fiscal year ending September 30, 1993.

(B) \$2,500,000 for the fiscal year ending September 30, 1994.

(f) SECTION 5307.—Amounts remaining available each fiscal year under subsection (a)(1) of this section, after allocation under subsections (g)–(i) and (j)(4) of this section, are available under section 5307 of this title.

(g) PLANNING, PROGRAMMING, AND RESEARCH.—Before apportioning in each fiscal year amounts made available or appropriated under subsection (a) of this section, an amount equal to 3 percent of amounts made available or appropriated under subsections (a) and (b) of this section is available as follows:

1 (1) 45 percent for metropolitan planning activities under section  
2 5303(g) of this title.

3 (2) 5 percent to carry out section 5308(b)(2) of this title.

4 (3) 20 percent to carry out State programs under section 5313 of  
5 this title.

6 (4) 30 percent to carry out the national program under section 5314  
7 of this title.

8 (h) OTHER SET-ASIDES.—Before apportioning in each fiscal year  
9 amounts made available or appropriated under subsection (a) of this section,  
10 of amounts made available or appropriated under subsections (a) and (b)  
11 of this section—

12 (1) not more than .96 percent is available for administrative ex-  
13 penses to carry out section 5334 (a) and (c)–(f) of this title;

14 (2) not more than 1.34 percent is available for transportation serv-  
15 ices to elderly individuals and individuals with disabilities under the  
16 formula under section 5310(a) of this title; and

17 (3) \$7,000,000 is available for section 5317 for each of the fiscal  
18 years ending September 30, 1993–1997.

19 (i) COMPLETING INTERSTATE TRANSFER TRANSIT PROJECTS.—Of the  
20 amounts remaining available each year under subsections (a) and (b) of this  
21 section, after allocation under subsections (g) and (h) of this section, not  
22 more than \$164,843,000 for the fiscal year ending September 30, 1993, is  
23 available for substitute transit projects under section 103(e)(4) of title 23.

24 (j) LIMITATIONS.—Of the amounts available—

25 (1) under subsection (a)(2) of this section, 3.5 percent is available  
26 to finance programs and activities, including administrative costs,  
27 under section 5310 of this title;

28 (2) 1.5 percent of the amounts available to finance research, develop-  
29 ment, and demonstration projects under section 5312(a) of this title is  
30 available to increase the information and technology available to pro-  
31 vide improved mass transportation service and facilities planned and  
32 designed to meet the special needs of elderly individuals and individuals  
33 with disabilities;

34 (3) not more than 12.5 percent is available for grants to any one  
35 State under section 5312(c)(2) of this title;

36 (4) 5.5 percent of the amount remaining available each year under  
37 subsection (a)(1) of this section, after allocation under subsections (g)–  
38 (i) of this section, is available under the formula under section 5311  
39 of this title; and

40 (5) under section 5309(m)(1)(C) of this title—

1 (A) \$2,000,000 is available for the fiscal year ending September  
2 30, 1993;

3 (B) the lesser of \$2,000,000 or an amount the Secretary deter-  
4 mines is necessary for each fiscal year is available for each of the  
5 fiscal years ending September 30, 1994–1996; and

6 (C) the lesser of \$3,000,000 or an amount the Secretary deter-  
7 mines is necessary is available for the fiscal year ending Septem-  
8 ber 30, 1997.

9 (k) GRANTS AS CONTRACTUAL OBLIGATIONS.—(1) A grant or contract  
10 approved by the Secretary, that is financed with amounts made available  
11 under subsection (a)(1), (b)(1), (c), or (e) of this section, is a contractual  
12 obligation of the United States Government to pay the Government's share  
13 of the cost of the project.

14 (2) A grant or contract, approved by the Secretary, that is financed with  
15 amounts made available under subsection (a)(2) or (b)(2) of this section,  
16 is a contractual obligation of the Government to pay the Government's  
17 share of the cost of the project only to the extent amounts are provided in  
18 advance in an appropriations law.

19 (l) EARLY APPROPRIATIONS AND AVAILABILITY OF AMOUNTS.—(1)  
20 Amounts appropriated under subsection (a)(2) of this section to carry out  
21 section 5311 of this title may be appropriated in the fiscal year before the  
22 fiscal year in which the appropriation is available for obligation.

23 (2) Amounts made available or appropriated under subsections (a), (b),  
24 (g), (h)(1) and (2), and (j)(4) of this section remain available until ex-  
25 pended.

26 (3) An amount apportioned under section 5308 of this title—

27 (A) remains available for 3 years after the fiscal year in which the  
28 amount is apportioned; and

29 (B) that is unobligated at the end of the 3-year period shall be added  
30 to the amount available for apportionment for the next fiscal year not  
31 later than 30 days after the end of the 3-year period.

## 32 **CHAPTER 55—INTERMODAL TRANSPORTATION**

### SUBCHAPTER I—GENERAL

Sec.

5501. National Intermodal Transportation System policy.

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## SUBCHAPTER I—GENERAL

### **§ 5501. National Intermodal Transportation System policy**

(a) GENERAL.—It is the policy of the United States Government to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the United States to compete in the global economy, and will move individuals and property in an energy efficient way.

(b) SYSTEM CHARACTERISTICS.—(1) The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the United States' preeminent position in international commerce.

(2) The National Intermodal Transportation System shall include a National Highway System consisting of the Dwight D. Eisenhower System of Interstate and Defense Highways and those principal arterial roads that are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

(3) The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals in urban and rural areas of the United States.

(4) The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to commerce.

(5) The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion, and other aspects of the quality of life in the United States.

(6) The National Intermodal Transportation System must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability. Practices that resulted in the lengthy and overly costly construction of the Dwight D. Eisenhower System of Interstate and Defense Highways must be confronted and stopped.



(7) The National Intermodal Transportation System shall be adapted to “intelligent vehicles”, “magnetic levitation systems”, and other new technologies, wherever feasible and economical, with benefit cost estimates given special emphasis on safety considerations and techniques for cost allocation.

(8) When appropriate, the National Intermodal Transportation System will be financed, as regards Government apportionments and reimbursements, by the Highway Trust Fund. Financial assistance will be provided to State and local governments and their instrumentalities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals.

(9) The National Intermodal Transportation System must be the centerpiece of a national investment commitment to create the new wealth of the United States for the 21st century.

(c) DISTRIBUTION AND POSTING.—The Secretary of Transportation shall distribute copies of the policy in subsections (a) and (b) of this section to each employee of the Department of Transportation and ensure that the policy is posted in all offices of the Department.

#### **§ 5502. Intermodal Transportation Advisory Board**

(a) ORGANIZATION.—The Intermodal Transportation Advisory Board is a board in the Office of the Secretary of Transportation.

(b) MEMBERSHIP.—The Board consists of the Secretary, who serves as chairman, and the Administrator, or the Administrator’s designee, of—

- (1) the Federal Highway Administration;
- (2) the Federal Aviation Administration;
- (3) the Maritime Administration;
- (4) the Federal Railroad Administration; and
- (5) the Federal Transit Administration.

(c) DUTIES AND POWERS.—The Board shall provide recommendations for carrying out the duties of the Secretary described in section 301(3) of this title.

#### **§ 5503. Office of Intermodalism**

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish in the Office of the Secretary an Office of Intermodalism.

(b) DIRECTOR.—The head of the Office is a Director who shall be appointed by the Secretary.

(c) DUTIES AND POWERS.—The Director shall carry out the duties of the Secretary described in section 301(3) of this title.

(d) INTERMODAL TRANSPORTATION DATA BASE.—(1) The Director shall develop, maintain, and disseminate intermodal transportation data through the Bureau of Transportation Statistics. The Director shall coordinate the

1 collection of data for the data base with the States and metropolitan plan-  
 2 ning organizations. The data base shall include information on—

3 (A) the volume of property and number of individuals carried in  
 4 intermodal transportation by relevant classification;

5 (B) patterns of movement of property and individuals in intermodal  
 6 transportation by relevant classification by origin and destination; and

7 (C) public and private investment in intermodal transportation facili-  
 8 ties and services.

9 (2) The Director shall make information from the data base available to  
 10 the public.

11 (e) RESEARCH.—The Director shall—

12 (1) coordinate United States Government research on intermodal  
 13 transportation as provided in the plan developed under section 6009(b)  
 14 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub-  
 15 lic Law 102-240, 105 Stat. 2177); and

16 (2) carry out additional research needs identified by the Director.

17 (f) TECHNICAL ASSISTANCE.—The Director shall provide technical assist-  
 18 ance to States and to metropolitan planning organizations for urban areas  
 19 having a population of at least 1,000,000 in collecting data related to inter-  
 20 modal transportation to facilitate the collection of the data by States and  
 21 metropolitan planning organizations.

22 (g) ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall pro-  
 23 vide administrative and clerical support to the Intermodal Transportation  
 24 Advisory Board.

#### 25 **§ 5504. Model intermodal transportation plans**

26 (a) GRANTS.—The Secretary of Transportation shall make grants to  
 27 States to develop model State intermodal transportation plans that are con-  
 28 sistent with the policy set forth in section 302(e) of this title. The model  
 29 plans shall include systems for collecting data related to intermodal trans-  
 30 portation.

31 (b) DISTRIBUTION.—The Secretary shall award grants to States under  
 32 this section that represent a variety of geographic regions and transpor-  
 33 tation needs, patterns, and modes.

34 (c) PLAN SUBMISSION.—As a condition to a State receiving a grant  
 35 under this section, the Secretary shall require that the State provide assur-  
 36 ances that the State will submit to the Secretary a State intermodal trans-  
 37 portation plan not later than 18 months after the date of receipt of the  
 38 grant.

39 (d) GRANT AMOUNTS.—The Secretary shall reserve, from amounts de-  
 40 ducted under section 104(a) of title 23, \$3,000,000 to make grants under

1 this section. The total amount that a State may receive in grants under this  
 2 section may not be more than \$500,000.

### 3 SUBCHAPTER II—TERMINALS

#### 4 **§ 5561. Definition**

5 In this chapter, “civic and cultural activities” includes libraries, musical  
 6 and dramatic presentations, art exhibits, adult education programs, public  
 7 meeting places, and other facilities for carrying on an activity any part of  
 8 which is supported under a law of the United States.

#### 9 **§ 5562. Assistance projects**

10 (a) REQUIREMENTS TO PROVIDE ASSISTANCE.—The Secretary of Trans-  
 11 portation shall provide financial, technical, and advisory assistance under  
 12 this chapter to—

13 (1) promote, on a feasibility demonstration basis, the conversion of  
 14 at least 3 rail passenger terminals into intermodal transportation ter-  
 15 minals;

16 (2) preserve rail passenger terminals that reasonably are likely to be  
 17 converted or maintained pending preparation of plans for their reuse;

18 (3) acquire and use space in suitable buildings of historic or architec-  
 19 tural significance but only if use of the space is feasible and prudent  
 20 when compared to available alternatives; and

21 (4) encourage State and local governments, local and regional trans-  
 22 portation authorities, common carriers, philanthropic organizations,  
 23 and other responsible persons to develop plans to convert rail passenger  
 24 terminals into intermodal transportation terminals and civic and cul-  
 25 tural activity centers.

26 (b) EFFECT ON ELIGIBILITY.—This chapter does not affect the eligibility  
 27 of any rail passenger terminal for preservation or reuse assistance under an-  
 28 other program or law.

29 (c) ACQUIRING SPACE.—The Secretary may acquire space under sub-  
 30 section (a)(3) of this section only after consulting with the Advisory Council  
 31 on Historic Preservation and the Chairman of the National Endowment for  
 32 the Arts.

#### 33 **§ 5563. Conversion of certain rail passenger terminals**

34 (a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Transpor-  
 35 tation may provide financial assistance to convert a rail passenger terminal  
 36 to an intermodal transportation terminal under section 5562(a)(1) of this  
 37 title only if—

38 (1) the terminal can be converted to accommodate other modes of  
 39 transportation the Secretary of Transportation decides are appropriate,  
 40 including—

41 (A) motorbus transportation;

- 1 (B) mass transit (rail or rubber tire); and
- 2 (C) airline ticket offices and passenger terminals providing di-
- 3 rect transportation to area airports;
- 4 (2) the terminal is listed on the National Register of Historic Places
- 5 maintained by the Secretary of the Interior;
- 6 (3) the architectural integrity of the terminal will be preserved;
- 7 (4) to the extent practicable, the use of the terminal facilities for
- 8 transportation may be combined with use of those facilities for other
- 9 civic and cultural activities, especially when another activity is rec-
- 10 ommended by—
- 11 (A) the Advisory Council on Historic Preservation;
- 12 (B) the Chairman of the National Endowment for the Arts; or
- 13 (C) consultants retained under subsection (b) of this section;
- 14 and
- 15 (5) the terminal and the conversion project meet other criteria pre-
- 16 scribed by the Secretary of Transportation after consultation with the
- 17 Council and Chairman.

18 (b) ARCHITECTURAL INTEGRITY.—The Secretary of Transportation must  
 19 employ consultants on whether the architectural integrity of the rail pas-  
 20 senger terminal will be preserved under subsection (a)(3) of this section.  
 21 The Secretary may decide that the architectural integrity will be preserved  
 22 only if the consultants concur. The Council and Chairman shall recommend  
 23 consultants to be employed by the Secretary. The consultants also may  
 24 make recommendations referred to in subsection (a)(4) of this section.

25 (c) GOVERNMENT'S SHARE OF COSTS.—The Secretary of Transportation  
 26 may not make a grant under this section for more than 80 percent of the  
 27 total cost of converting a rail passenger terminal into an intermodal trans-  
 28 portation terminal.

29 **§ 5564. Interim preservation of certain rail passenger termi-**  
 30 **nals**

31 (a) GENERAL GRANT AUTHORITY.—Subject to subsection (b) of this sec-  
 32 tion, the Secretary of Transportation may make a grant of financial assist-  
 33 ance to a responsible person (including a governmental authority) to pre-  
 34 serve a rail passenger terminal under section 5562(a)(2) of this title. To  
 35 receive assistance under this section, the person must be qualified, prepared,  
 36 committed, and authorized by law to maintain (and prevent the demolition,  
 37 dismantling, or further deterioration of) the terminal until plans for its  
 38 reuse are prepared.

39 (b) GRANT REQUIREMENTS.—The Secretary of Transportation may make  
 40 a grant of financial assistance under this section only if—

(1) the Secretary decides the rail passenger terminal has a reasonable likelihood of being converted to, or conditioned for reuse as, an intermodal transportation terminal, a civic or cultural activities center, or both; and

(2) planning activity directed toward conversion or reuse has begun and is proceeding in a competent way.

(c) MAXIMIZING PRESERVATION OF TERMINALS.—(1) Amounts appropriated to carry out this section and section 5562(a)(2) of this title shall be expended in the way most likely to maximize the preservation of rail passenger terminals that are—

(A) reasonably capable of conversion to intermodal transportation terminals;

(B) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(C) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of maintaining the terminal for an interim period of not more than 5 years.

**§5565. Encouraging the development of plans for converting rail passenger terminals**

(a) GENERAL GRANT AUTHORITY.—The Secretary of Transportation may make a grant of financial assistance to a qualified person (including a governmental authority) to encourage the development of plans for converting a rail passenger terminal under section 5562(a)(4) of this title. To receive assistance under this section, the person must—

(1) be prepared to develop practicable plans that meet zoning, land use, and other requirements of the applicable State and local jurisdictions in which the terminal is located;

(2) incorporate into the designs and plans proposed for converting the terminal, features that reasonably appear likely to attract private investors willing to carry out the planned conversion and its subsequent maintenance and operation; and

(3) complete the designs and plans for the conversion within the period of time prescribed by the Secretary.

(b) PREFERENCE.—In making a grant under this section, the Secretary of Transportation shall give preferential consideration to an applicant whose completed designs and plans will be carried out within 3 years after their completion.

(c) MAXIMIZING CONVERSION AND CONTINUED PUBLIC USE.—(1) Amounts appropriated to carry out this section and section 5562(a)(4) of this title shall be expended in the way most likely to maximize the conversion and continued public use of rail passenger terminals that are—

(A) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(B) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of the project for which the financial assistance is provided.

### **§ 5566. Records and audits**

(a) RECORD REQUIREMENTS.—Each recipient of financial assistance under this chapter shall keep records required by the Secretary of Transportation. The records shall disclose—

(1) the amount, and disposition by the recipient, of the proceeds of the assistance;

(2) the total cost of the project for which the assistance was given or used;

(3) the amount of that part of the cost of the project supplied by other sources; and

(4) any other records that will make an effective audit easier.

(b) AUDITS AND INSPECTIONS.—For 3 years after a project is completed, the Secretary and the Comptroller General may audit and inspect records of a recipient that the Secretary or Comptroller General decides may be related or pertinent to the financial assistance.

### **§ 5567. Preference for preserving buildings of historic or architectural significance**

Amtrak shall give preference to the use of rail passenger terminal facilities that will preserve buildings of historic or architectural significance.

### **§ 5568. Authorization of appropriations**

(a) GENERAL.—The following amounts may be appropriated to the Secretary of Transportation:

(1) not more than \$15,000,000 to carry out section 5562(a) (1) and (3) of this title.

(2) not more than \$2,500,000 to carry out section 5562(a)(2) of this title.

(3) not more than \$2,500,000 to carry out section 5562(a)(4) of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated to carry out this chapter remain available until expended.

## **CHAPTER 57—SANITARY FOOD TRANSPORTATION**

Sec.

- 5701. Findings.
- 5702. Definitions.
- 5703. General regulation.
- 5704. Tank trucks, rail tank cars, and cargo tanks.
- 5705. Motor and rail transportation of nonfood products.
- 5706. Dedicated vehicles.
- 5707. Waiver authority.
- 5708. Food transportation inspections.
- 5709. Consultation.
- 5710. Administrative.
- 5711. Enforcement and penalties.
- 5712. Relationship to other laws.
- 5713. Application of sections 5711 and 5712.
- 5714. Coordination procedures.

### **§ 5701. Findings**

Congress finds that—

(1) the United States public is entitled to receive food and other consumer products that are not made unsafe because of certain transportation practices;

(2) the United States public is threatened by the transportation of products potentially harmful to consumers in motor vehicles and rail vehicles that are used to transport food and other consumer products; and

(3) the risks to consumers by those transportation practices are unnecessary and those practices must be ended.

### **§ 5702. Definitions**

In this chapter—

(1) “cosmetic”, “device”, “drug”, “food”, and “food additive” have the same meanings given those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(2) “nonfood product” means (individually or by class) a material, substance, or product that is not a cosmetic, device, drug, food, or food additive, or is deemed a nonfood product under section 5703(a)(2) of this title, including refuse and solid waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(3) “refuse” means discarded material that is, or is required by law, to be transported to or disposed of in a landfill or incinerator.

(4) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States.

(5) “transports” and “transportation” mean any movement of property in commerce (including intrastate commerce) by motor vehicle or rail vehicle.

(6) “United States” means all of the States.

**§ 5703. General regulation**

(a) GENERAL REQUIREMENTS.—(1) Not later than July 31, 1991, the Secretary of Transportation, after consultation required by section 5709 of this title, shall prescribe regulations on the transportation of cosmetics, devices, drugs, food, and food additives in motor vehicles and rail vehicles that are used to transport nonfood products that would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

(2) The Secretary shall deem a cosmetic, device, or drug to be a nonfood product if—

(A) the cosmetic, device, or drug is transported in a motor vehicle or rail vehicle before, or at the same time as, a food or food additive; and

(B) transportation of the cosmetic, device, or drug would make the food or food additive unsafe to humans or animals.

(b) SPECIAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall establish requirements for appropriate—

(1) recordkeeping, identification, marking, certification, or other means of verification to comply with sections 5704–5706 of this title;

(2) decontamination, removal, disposal, and isolation to comply with regulations carrying out sections 5704 and 5705 of this title; and

(3) material for the construction of tank trucks, rail tank cars, cargo tanks, and accessory equipment to comply with regulations carrying out section 5704 of this title.

(c) CONSIDERATIONS AND ADDITIONAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall consider, and may establish requirements related to, each of the following:

(1) the extent to which packaging or similar means of protecting and isolating commodities are adequate to eliminate or ameliorate the potential risks of transporting cosmetics, devices, drugs, food, or food additives in motor vehicles or rail vehicles used to transport nonfood products.

(2) appropriate compliance and enforcement measures to carry out this chapter.

(3) appropriate minimum insurance or other liability requirements for a person to whom this chapter applies.



(d) PACKAGES MEETING PACKAGING STANDARDS.—If the Secretary finds packaging standards to be adequate, regulations under subsection (a)(1) of this section may not apply to cosmetics, devices, drugs, food, food additives, or nonfood products packaged in packages that meet the standards.

**§ 5704. Tank trucks, rail tank cars, and cargo tanks**

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from—

(1) using, offering for use, or arranging for the use of a tank truck, rail tank car, or cargo tank used in motor vehicle or rail transportation of cosmetics, devices, drugs, food, or food additives if the tank truck, rail tank car, or cargo tank is used to transport a nonfood product, except a nonfood product included in a list published under subsection (b) of this section;

(2) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of cosmetics, devices, drugs, food, food additives, or nonfood products included in the list published under subsection (b) of this section unless the tank truck or cargo tank is identified, by a permanent marking on the tank truck or cargo tank, as transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list;

(3) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of a nonfood product that is not included in the list published under subsection (b) of this section if the tank truck or cargo tank is identified, as provided in clause (2) of this subsection, as a tank truck or cargo tank transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list; or

(4) receiving, except for lawful disposal purposes, any cosmetic, device, drug, food, food additive, or nonfood product that has been transported in a tank truck or cargo tank in violation of clause (2) or (3) of this subsection.

(b) LIST OF NONFOOD PRODUCTS NOT UNSAFE.—After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides do not make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a tank truck, rail tank car, or cargo tank used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

(c) DISCLOSURE.—A person that arranges for the use of a tank truck or cargo tank used in motor vehicle transportation for the transportation of

a cosmetic, device, drug, food, food additive, or nonfood product shall disclose to the motor carrier or other appropriate person if the cosmetic, device, drug, food, food additive, or nonfood product being transported is to be used—

(1) as, or in the preparation of, a food or food additive; or

(2) as a nonfood product included in the list published under subsection (b) of this section.

#### **§ 5705. Motor and rail transportation of nonfood products**

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle (except a tank truck, rail tank car, or cargo tank described in section 5704 of this title) to transport cosmetics, devices, drugs, food, or food additives if the vehicle is used to transport nonfood products included in a list published under subsection (b) of this section.

(b) LIST OF UNSAFE NONFOOD PRODUCTS.—(1) After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides would make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

(2) The list published under paragraph (1) of this subsection may not include cardboard, pallets, beverage containers, and other food packaging except to the extent the Secretary decides that the transportation of cardboard, pallets, beverage containers, or other food packaging in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

#### **§ 5706. Dedicated vehicles**

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle to transport asbestos, in forms or quantities the Secretary of Transportation decides are necessary, or products that present an extreme danger to humans or animals, despite any decontamination, removal, disposal, packaging, or other isolation procedures, unless the motor vehicle or rail vehicle is used only to transport one or more of the following: asbestos, those extremely dangerous products, or refuse.

(b) LIST OF APPLICABLE PRODUCTS.—After consultation required by section 5709 of this title, the Secretary shall publish in the Federal Register a list of the products to which this section applies. The Secretary may amend the list periodically by publication in the Federal Register.

**§ 5707. Waiver authority**

(a) GENERAL AUTHORITY.—After consultation required by section 5709 of this title, the Secretary of Transportation may waive any part of this chapter or regulations prescribed under this chapter for a class of persons, motor vehicles, rail vehicles, cosmetics, devices, drugs, food, food additives, or nonfood products, if the Secretary decides that the waiver—

(1) would not result in the transportation of cosmetics, devices, drugs, food, or food additives that would be unsafe to humans or animals; and

(2) would not be contrary to the public interest and this chapter.

(b) PUBLICATION OF WAIVERS.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

**§ 5708. Food transportation inspections**

(a) GENERAL AUTHORITY.—For commercial motor vehicles, the Secretary of Transportation may carry out this chapter and assist in carrying out compatible State laws and regulations through means that include inspections conducted by State employees that are paid for with money authorized under section 31104 of this title, if the recipient State agrees to assist in the enforcement of this chapter or is enforcing compatible State laws and regulations.

(b) PROVIDING ASSISTANCE.—On the request of the Secretary of Transportation, the Secretaries of Agriculture and Health and Human Services, the Administrator of the Environmental Protection Agency, and the heads of other appropriate departments, agencies, and instrumentalities of the United States Government shall provide assistance, to the extent available, to the Secretary of Transportation to carry out this chapter, including assistance in the training of personnel under a program established under subsection (c) of this section.

(c) TRAINING PROGRAM.—After consultation required by section 5709 of this title and consultation with the heads of appropriate State transportation and food safety authorities, the Secretary of Transportation shall develop and carry out a training program for inspectors to conduct vigorous enforcement of this chapter and regulations prescribed under this chapter or compatible State laws and regulations. As part of the training program, the inspectors, including State inspectors or personnel paid with money authorized under section 31104 of this title, shall be trained in the recognition of adulteration problems associated with the transportation of cosmetics, de-

vices, drugs, food, and food additives and in the procedures for obtaining assistance of the appropriate departments, agencies, and instrumentalities of the Government and State authorities to support the enforcement.

**§ 5709. Consultation**

As provided by sections 5703–5708 of this title, the Secretary of Transportation shall consult with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency.

**§ 5710. Administrative**

The Secretary of Transportation has the same duties and powers in regulating transportation under this chapter as the Secretary has under section 5121(a)–(c) (except subsection (c)(1)(A)) of this title in regulating transportation under chapter 51 of this title.

**§ 5711. Enforcement and penalties**

(a) ACTIONS.—The Secretary of Transportation shall request that a civil action be brought and take action to eliminate or ameliorate an imminent hazard related to a violation of a regulation prescribed or order issued under this chapter in the same way and to the same extent as authorized by section 5122 of this title.

(b) APPLICABLE PENALTIES AND PROCEDURES.—The penalties and procedures in sections 5123 and 5124 of this title apply to a violation of a regulation prescribed or order issued under this chapter.

**§ 5712. Relationship to other laws**

Section 5125 of this title applies to the relationship between this chapter and a requirement of a State, a political subdivision of a State, or an Indian tribe.

**§ 5713. Application of sections 5711 and 5712**

Sections 5711 and 5712 of this title apply only to transportation occurring on or after the date that regulations prescribed under section 5703(a)(1) of this title are effective.

**§ 5714. Coordination procedures**

Not later than November 3, 1991, the Secretary of Transportation, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the departments, agencies, and instrumentalities of the United States Government and State authorities with regulatory authority over motor carrier safety and railroad safety in carrying out and enforcing this chapter.

**CHAPTER 59—INTERMODAL SAFE CONTAINER  
TRANSPORTATION**

Sec.  
5901. Definitions.

- 5902. Notifications and certifications.
- 5903. Prohibitions.
- 5904. State enforcement.
- 5905. Liens.
- 5906. Perishable agricultural commodities.
- 5907. Regulations and effective date.

## § 5901. Definitions

In this chapter—

(1) the definitions in section 10102 of this title apply.

(2) “beneficial owner” means a person not having title to property but having ownership rights in the property, including a trustee of property in transit from an overseas place of origin that is domiciled or doing business in the United States, except that a carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouser, or terminal operator is not a beneficial owner only because of providing or arranging for any part of the intermodal transportation of property.

(3) “carrier” means—

(A) a motor carrier, water carrier, and rail carrier providing transportation of property in commerce; and

(B) an ocean common carrier (as defined in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702)) providing transportation of property in commerce.

(4) “container” has the meaning given the term “freight container” by the International Standards Organization in Series 1, Freight Containers, 3d Edition (reference number ISO668–1979(E)), including successive revisions, and similar containers that are used in providing transportation in interstate commerce.

(5) “first carrier” means the first carrier transporting a loaded container or trailer in intermodal transportation.

(6) “intermodal transportation” means the successive transportation of a loaded container or trailer from its place of origin to its place of destination by more than one mode of transportation in interstate or foreign commerce, whether under a single bill of lading or under separate bills of lading.

(7) “trailer” means a nonpower, property-carrying, trailing unit that is designed for use in combination with a truck tractor.

## § 5902. Notifications and certifications

(a) PRIOR NOTIFICATION.—Before a person tenders to a first carrier for intermodal transportation a loaded container or trailer having a projected gross cargo weight of more than 10,000 pounds (including packing material and pallets), the person shall give the carrier a written notification of the gross cargo weight and a reasonable description of the contents of the container or trailer. The notification may be transmitted electronically.

(b) CERTIFICATION.—Not later than when a person tenders to a first carrier for intermodal transportation a container or trailer to which subsection (a) of this section applies or a loaded container or trailer having an actual gross cargo weight of more than 10,000 pounds (including packing material and pallets), the person shall certify to the carrier in writing the actual gross cargo weight and a reasonable description of the contents of the container or trailer.

(c) FORWARDING CERTIFICATIONS TO SUBSEQUENT CARRIERS.—A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator shall forward the certification provided under subsection (b) of this section to a subsequent carrier transporting the container or trailer in intermodal transportation. The act of forwarding the certification may not be construed as a verification or affirmation of the accuracy or completeness of the information in the certification.

(d) NONAPPLICATION.—(1) Subsections (a) and (b) of this section and section 5903(c) of this title do not apply to a carrier when the carrier is transferring a loaded container or trailer to another carrier during intermodal transportation, unless the carrier is also the person tendering the loaded container or trailer to the first carrier.

(2) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is deemed not to be a person tendering a loaded container or trailer to a first carrier under this section, unless the carrier, agent, broker, customs broker, freight forwarder, warehouse, or terminal operator assumes legal responsibility for loading property into the container or trailer.

### **§ 5903. Prohibitions**

(a) PROVIDING ERRONEOUS INFORMATION.—A person tendering a loaded container or trailer may not provide erroneous information in a certification required by section 5902(b) of this title.

(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—A motor carrier may not transport a loaded container or trailer to which section 5902(b) of this title applies before receiving the certification required by section 5902(b).

(c) UNLAWFUL COERCION.—(1) A person may not coerce or attempt to coerce a person participating in intermodal transportation to transport a loaded container or trailer having an actual gross cargo weight of more than 10,000 pounds (including packing materials and pallets) before the certification required by section 5902(b) of this title is provided.

(2) A person, knowing that the weight of a loaded container or trailer or the weight of a tractor-trailer combination carrying the container or trailer is more than the weight allowed by applicable State law, may not coerce

1 or attempt to coerce a carrier to transport the container or trailer or to op-  
 2 erate the tractor-trailer combination in violation of that State law.

3 **§ 5904. State enforcement**

4 (a) GENERAL.—A State may enact a law to permit the State or a politi-  
 5 cal subdivision of the State—

6 (1) to impose a fine or penalty, for a violation of a State highway  
 7 weight law or regulation by a tractor-trailer combination carrying a  
 8 loaded container or trailer for which a certification is required by sec-  
 9 tion 5902(b) of this title, against the person tendering the loaded con-  
 10 tainer or trailer to the first carrier if the violation results from the per-  
 11 son's having provided erroneous information in the certification in vio-  
 12 lation of section 5903(a) of this title; and

13 (2) to impound the container or trailer until the fine or penalty has  
 14 been paid by the owner or beneficial owner of the contents of the con-  
 15 tainer or trailer or the person tendering the loaded container or trailer  
 16 to the first carrier.

17 (b) LIMITATION.—This chapter does not require a person tendering a  
 18 loaded container or trailer to a first carrier to ensure that the first carrier  
 19 or any other carrier involved in the intermodal transportation will comply  
 20 with any State highway weight law or regulation, other than as required by  
 21 this chapter.

22 **§ 5905. Liens**

23 (a) GENERAL.—If a person involved in the intermodal transportation of  
 24 a loaded container or trailer for which a certification is required by section  
 25 5902(b) of this title is required under State law to post a bond or pay any  
 26 fine, penalty, cost, or interest resulting from providing erroneous informa-  
 27 tion in the certification to the first carrier in violation of section 5903(a)  
 28 of this title, the person has a lien against the contents equal to the amount  
 29 of the bond, fine, penalty, cost, or interest incurred, until the person re-  
 30 ceives a payment of that amount from the owner or beneficial owner of the  
 31 contents or from the person responsible for making the certification.

32 (b) LIMITATIONS.—(1) A lien under this section does not authorize a per-  
 33 son to dispose of the contents of a loaded container or trailer until the per-  
 34 son who tendered the container or trailer to the first carrier is given a rea-  
 35 sonable opportunity to establish responsibility for the bond, fine, penalty,  
 36 cost, or interest.

37 (2) In this section, an owner or beneficial owner of the contents of a con-  
 38 tainer or trailer or a person tendering a container or trailer to the first car-  
 39 rier is deemed not to be a person involved in the intermodal transportation  
 40 of the container or trailer.

**§ 5906. Perishable agricultural commodities**

Sections 5904(a)(2) and 5905 of this title do not apply to a container or trailer the contents of which are perishable agricultural commodities (as defined in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a et seq.)).

**§ 5907. Regulations and effective date**

(a) REGULATIONS.—Not later than July 25, 1993, the Secretary of Transportation shall prescribe final regulations to enforce this chapter. The Secretary may establish by regulation exemptions to the regulations that are in the public interest and consistent with the purposes of this chapter.

(b) EFFECTIVE DATE.—This chapter is effective on the date final regulations to enforce this chapter are prescribed.

(c) Title 49, United States Code, is amended by adding the following immediately after subtitle IV:

**SUBTITLE V—RAIL PROGRAMS**

**PART A—SAFETY**

CHAPTER	Sec.
201. GENERAL .....	20101
203. SAFETY APPLIANCES .....	20301
205. SIGNAL SYSTEMS .....	20501
207. LOCOMOTIVES .....	20701
209. ACCIDENTS AND INCIDENTS .....	20901
211. HOURS OF SERVICE .....	21101
213. PENALTIES .....	21301

**PART B—ASSISTANCE**

221. LOCAL RAIL FREIGHT ASSISTANCE .....	22101
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**PART C—PASSENGER TRANSPORTATION**

241. GENERAL .....	24101
243. AMTRAK .....	24301
245. AMTRAK COMMUTER .....	24501
247. AMTRAK ROUTE SYSTEM .....	24701
249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM .....	24901

**PART D—MISCELLANEOUS**

261. LAW ENFORCEMENT .....	26101
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**PART A—SAFETY**

**CHAPTER 201—GENERAL**

**SUBCHAPTER I—GENERAL**

Sec.
20101. Purpose.
20102. Definitions.
20103. General authority.
20104. Emergency authority.
20105. State participation.
20106. National uniformity of regulation.
20107. Inspection and investigation.
20108. Research, development, testing, and training.
20109. Employee protections.
20110. Effect on employee qualifications and collective bargaining.
20111. Enforcement by the Secretary of Transportation.



- 20112. Enforcement by the Attorney General.
- 20113. Enforcement by the States.
- 20114. Judicial procedures.
- 20115. User fees.
- 20116. Annual report.
- 20117. Authorization of appropriations.

#### SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

- 20131. Restricted access to rolling equipment.
- 20132. Visible markers for rear cars.
- 20133. Passenger equipment.
- 20134. Grade crossings and railroad rights of way.
- 20135. Licensing or certification of locomotive operators.
- 20136. Automatic train control and related systems.
- 20137. Event recorders.
- 20138. Tampering with safety and operational monitoring devices.
- 20139. Maintenance-of-way operations on railroad bridges.
- 20140. Alcohol and controlled substances testing.
- 20141. Power brake safety.
- 20142. Track safety.
- 20143. Locomotive visibility.

#### SUBCHAPTER I—GENERAL

##### **§ 20101. Purpose**

The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.

##### **§ 20102. Definitions**

In this part—

(1) “railroad”—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(2) “railroad carrier” means a person providing railroad transportation.

##### **§ 20103. General authority**

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

#### **§20104. Emergency authority**

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury, the Secretary immediately may order restrictions and prohibitions, without regard to section 20103(e) of this title, that may be necessary to abate the situation.

(2) The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this section to maintain the order in effect for as long as the emergency situation exists.

(b) REVIEW OF ORDERS.—After issuing an order under this section, the Secretary shall provide an opportunity for review of the order under section 554 of title 5. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

(c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the

Secretary's failure, without any reasonable basis, to issue an order under subsection (a) of this section, or the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which that employing carrier has its principal executive office, or for the District of Columbia. The Secretary's failure to issue an order under subsection (a) of this section may be reviewed only under section 706 of title 5.

**§ 20105. State participation**

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary of Transportation may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the Secretary an annual certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority's annual certification must include—

(A) a certification that the authority—

(i) has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the State;

(ii) was given a copy of each safety regulation prescribed and order issued by the Secretary, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and

(iii) is conducting the investigative and surveillance activities prescribed by the Secretary under subsection (a) of this section; and

(B) a report, in the form the Secretary prescribes by regulation, that includes—

(i) the name and address of each railroad carrier subject to the safety jurisdiction of the authority;

(ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than \$750 (or a higher amount prescribed by the Secretary), and a summary of the authority's investigation of the cause and circumstances surrounding the accident or incident;

(iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the Secretary in enforcing railroad safety regulations prescribed and orders issued by the Secretary, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and

(iv) other information the Secretary requires.

(2) An annual certification applies to a safety regulation prescribed or order issued after the date of the certification only if the State authority submits an appropriate certification to provide the necessary investigative and surveillance activities.

(3) If, after receipt of an annual certification, the Secretary decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the Secretary may reject any part of the certification or take other appropriate action to achieve adequate enforcement. The Secretary must give the authority notice and an opportunity for a hearing before taking action under this paragraph. When the Secretary gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the Secretary.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Secretary does not receive an annual certification under subsection (a) of this section related to any railroad equipment, facility, rolling stock, or operation, the Secretary may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the Secretary as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The Secretary may terminate any part of an agreement made under this subsection on finding that the authority has not provided every part of the investigative and surveillance activities to which the agreement relates. The Secretary must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In addition to providing for State participation under this section, the Secretary may make an agreement with a State to provide investigative and surveillance activities related to the Secretary's duties under chapters 203–213 of this title.

(e) PAYMENT.—On application by a State authority that has submitted a certification under subsections (a) and (b) of this section or made an

1 agreement under subsection (c) or (d) of this section, the Secretary shall  
 2 pay not more than 50 percent of the cost of the personnel, equipment, and  
 3 activities of the authority needed, during the next fiscal year, to carry out  
 4 a safety program under the certification or agreement. However, the Sec-  
 5 retary may pay an authority only when the authority assures the Secretary  
 6 that it will provide the remaining cost of the safety program and that the  
 7 total State money expended for the safety program, excluding grants of the  
 8 United States Government, will be at least as much as the average amount  
 9 expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

10 (f) MONITORING.—The Secretary may monitor State investigative and  
 11 surveillance practices and carry out other inspections and investigations nec-  
 12 essary to help enforce this chapter.

### 13 **§ 20106. National uniformity of regulation**

14 Laws, regulations, and orders related to railroad safety shall be nationally  
 15 uniform to the extent practicable. A State may adopt or continue in force  
 16 a law, regulation, or order related to railroad safety until the Secretary of  
 17 Transportation prescribes a regulation or issues an order covering the sub-  
 18 ject matter of the State requirement. A State may adopt or continue in  
 19 force an additional or more stringent law, regulation, or order related to  
 20 railroad safety when the law, regulation, or order—

- 21 (1) is necessary to eliminate or reduce an essentially local safety haz-  
 22 ard;
- 23 (2) is not incompatible with a law, regulation, or order of the United  
 24 States Government; and
- 25 (3) does not unreasonably burden interstate commerce.

### 26 **§ 20107. Inspection and investigation**

27 (a) GENERAL.—To carry out this part, the Secretary of Transportation  
 28 may take actions the Secretary considers necessary, including—

- 29 (1) conduct investigations, make reports, issue subpoenas, require the  
 30 production of documents, take depositions, and prescribe recordkeeping  
 31 and reporting requirements; and
- 32 (2) delegate to a public entity or qualified person the inspection, ex-  
 33 amination, and testing of railroad equipment, facilities, rolling stock,  
 34 operations, and persons.

35 (b) ENTRY AND INSPECTION.—In carrying out this part, an officer, em-  
 36 ployee, or agent of the Secretary, at reasonable times and in a reasonable  
 37 way, may enter and inspect railroad equipment, facilities, rolling stock, op-  
 38 erations, and relevant records. When requested, the officer, employee, or  
 39 agent shall display proper credentials. During an inspection, the officer, em-  
 40 ployee, or agent is an employee of the United States Government under  
 41 chapter 171 of title 28.

1   **§ 20108. Research, development, testing, and training**

2       (a) GENERAL.—The Secretary of Transportation shall carry out, as nec-  
3       essary, research, development, testing, evaluation, and training for every  
4       area of railroad safety.

5       (b) CONTRACTS.—To carry out this part, the Secretary may make con-  
6       tracts for, and carry out, research, development, testing, evaluation, and  
7       training (particularly for those areas of railroad safety found to need  
8       prompt attention).

9       (c) AMOUNTS FROM NON-GOVERNMENT SOURCES FOR TRAINING SAFE-  
10      TY EMPLOYEES.—The Secretary may request, receive, and expend amounts  
11      received from non-United States Government sources for expenses incurred  
12      in training safety employees of private industry, State and local authorities,  
13      or other public authorities, except State rail safety inspectors participating  
14      in training under section 20105 of this title.

15   **§ 20109. Employee protections**

16      (a) FILING COMPLAINTS AND TESTIFYING.—A railroad carrier engaged  
17      in interstate or foreign commerce may not discharge or in any way discrimi-  
18      nate against an employee because the employee, whether acting for the em-  
19      ployee or as a representative, has—

20          (1) filed a complaint or brought or caused to be brought a proceed-  
21          ing related to the enforcement of this part or chapter 51 or 57 of this  
22          title; or

23          (2) testified or will testify in that proceeding.

24      (b) REFUSING TO WORK BECAUSE OF HAZARDOUS CONDITIONS.—(1) A  
25      railroad carrier engaged in interstate or foreign commerce may not dis-  
26      charge or in any way discriminate against an employee for refusing to work  
27      when confronted by a hazardous condition related to the performance of the  
28      employee's duties, if—

29          (A) the refusal is made in good faith and no reasonable alternative  
30          to the refusal is available to the employee;

31          (B) a reasonable individual in the circumstances then confronting  
32          the employee would conclude that—

33              (i) the hazardous condition presents an imminent danger of  
34              death or serious injury; and

35              (ii) the urgency of the situation does not allow sufficient time  
36              to eliminate the danger through regular statutory means; and

37          (C) the employee, where possible, has notified the carrier of the haz-  
38          ardous condition and the intention not to perform further work unless  
39          the condition is corrected immediately.

40      (2) This subsection does not apply to security personnel employed by a  
41      carrier to protect individuals and property transported by railroad.

1 (c) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under  
 2 this section is subject to resolution under section 3 of the Railway Labor  
 3 Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment  
 4 Board, a division or delegate of the Board, or another board of adjustment  
 5 established under section 3 to resolve the dispute, grievance, or claim, the  
 6 proceeding shall be expedited and the dispute, grievance, or claim shall be  
 7 resolved not later than 180 days after it is filed. If the violation is a form  
 8 of discrimination that does not involve discharge, suspension, or another ac-  
 9 tion affecting pay, and no other remedy is available under this subsection,  
 10 the Board, division, delegate, or other board of adjustment may award the  
 11 employee reasonable damages, including punitive damages, of not more than  
 12 \$20,000.

13 (d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not  
 14 seek protection under both this section and another provision of law for the  
 15 same allegedly unlawful act of the carrier.

16 (e) DISCLOSURE OF IDENTITY.—(1) Except as provided in paragraph (2)  
 17 of this subsection, or with the written consent of the employee, the Sec-  
 18 retary of Transportation may not disclose the name of an employee of a  
 19 railroad carrier who has provided information about an alleged violation of  
 20 this part, chapter 51 or 57 of this title, or a regulation prescribed or order  
 21 issued under this part or chapter 51 or 57.

22 (2) The Secretary shall disclose to the Attorney General the name of an  
 23 employee described in paragraph (1) of this subsection if the matter is re-  
 24 ferred to the Attorney General for enforcement.

25 **§20110. Effect on employee qualifications and collective**  
 26 **bargaining**

27 This chapter does not—

28 (1) authorize the Secretary of Transportation to prescribe regula-  
 29 tions and issue orders related to qualifications of employees, except  
 30 qualifications specifically related to safety; or

31 (2) prohibit the bargaining representatives of railroad carriers and  
 32 their employees from making collective bargaining agreements under  
 33 the Railway Labor Act (45 U.S.C. 151 et seq.), including agreements  
 34 related to qualifications of employees, that are not inconsistent with  
 35 regulations prescribed and orders issued under this chapter.

36 **§20111. Enforcement by the Secretary of Transportation**

37 (a) EXCLUSIVE AUTHORITY.—The Secretary of Transportation has exclu-  
 38 sive authority—

39 (1) to impose and compromise a civil penalty for a violation of a rail-  
 40 road safety regulation prescribed or order issued by the Secretary;

(2) except as provided in section 20113 of this title, to request an injunction for a violation of a railroad safety regulation prescribed or order issued by the Secretary; and

(3) to recommend appropriate action be taken under section 20112(a) of this title.

(b) COMPLIANCE ORDERS.—The Secretary may issue an order directing compliance with this part or with a railroad safety regulation prescribed or order issued under this part.

(c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS.—If an individual's violation of a regulation prescribed or order issued by the Secretary under this chapter is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after notice and opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met. This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.

(d) REGULATIONS REQUIRING REPORTING OF REMEDIAL ACTIONS.—(1) The Secretary shall prescribe regulations to require that a railroad carrier notified by the Secretary that imposition of a civil penalty will be recommended for a failure to comply with this part, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions, shall report to the Secretary, not later than the 30th day after the end of the month in which the notification is received—

(A) actions taken to remedy the failure; or

(B) if appropriate remedial actions cannot be taken by that 30th day, an explanation of the reasons for the delay.

(2) The Secretary—

(A) not later than June 3, 1993, shall issue a notice of a regulatory proceeding for proposed regulations to carry out this subsection; and

(B) not later than September 3, 1994, shall prescribe final regulations to carry out this subsection.

### **§20112. Enforcement by the Attorney General**

(a) CIVIL ACTIONS.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in a district court of the United States—

(1) to enjoin a violation of, or to enforce, a railroad safety regulation prescribed or order issued by the Secretary;

(2) to collect a civil penalty imposed or an amount agreed on in compromise under section 21301 of this title; or

(3) to enforce a subpoena issued by the Secretary under this chapter.



(b) VENUE.—(1) Except as provided in paragraph (2) of this subsection, a civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If an action to collect a penalty is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action to enforce a subpoena issued by the Secretary or a compliance order issued under section 20111(b) of this title may be brought in the judicial district in which the defendant resides, does business, or is found.

### **§ 20113. Enforcement by the States**

(a) INJUNCTIVE RELIEF.—If the Secretary of Transportation does not begin a civil action under section 20112 of this title to enjoin the violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 15 days after the date the Secretary receives notice of the violation and a request from a State authority participating in investigative and surveillance activities under section 20105 of this title that the action be brought, the authority may bring a civil action in a district court of the United States to enjoin the violation. This subsection does not apply if the Secretary makes an affirmative written finding that the violation did not occur or that the action is not necessary because of other enforcement action taken by the Secretary related to the violation.

(b) IMPOSITION AND COLLECTION OF CIVIL PENALTIES.—If the Secretary does not impose the applicable civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 60 days after the date of receiving notice from a State authority participating in investigative and surveillance activities under section 20105 of this title, the authority may bring a civil action in a district court of the United States to impose and collect the penalty. This paragraph does not apply if the Secretary makes an affirmative written finding that the violation did not occur.

(c) VENUE.—A civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. However, a State authority may not bring an action under this section outside the State.

### **§ 20114. Judicial procedures**

(a) CRIMINAL CONTEMPT.—In a trial for criminal contempt for violating an injunction or restraining order issued under this chapter, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(b) SUBPENAS FOR WITNESSES.—A subpoena for a witness required to attend a district court of the United States in an action brought under this chapter may be served in any judicial district.

**§ 20115. User fees**

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe by regulation a schedule of fees for railroad carriers subject to this chapter. The fees—

(1) shall cover the costs of carrying out this chapter (except section 20108(a));

(2) shall be imposed fairly on the railroad carriers, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors; and

(3) may not be based on that part of industry revenues attributable to a railroad carrier or class of railroad carriers.

(b) COLLECTION PROCEDURES.—The Secretary shall prescribe procedures to collect the fees. The Secretary may use the services of a department, agency, or instrumentality of the United States Government or of a State or local authority to collect the fees, and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(c) COLLECTION, DEPOSIT, AND USE.—(1) The Secretary shall impose and collect fees under this section for each fiscal year before the end of the fiscal year.

(2) Fees collected under this section shall be deposited in the general fund of the Treasury as offsetting receipts. The fees may be used, to the extent provided in advance in an appropriation law, only to carry out this chapter.

(3) Fees prescribed under this section shall be imposed in an amount sufficient to pay for the costs of activities under this chapter. However, the total fees received for a fiscal year may not be more than 105 percent of the total amount of the appropriations for the fiscal year for activities to be financed by the fees.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the end of each fiscal year in which fees are collected under this section, the Secretary shall report to Congress on—

(A) the amount of fees collected during that fiscal year;

(B) the impact of the fees on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

(C) the total cost of Government safety activities for each other competing mode of transportation, including any part of that total cost defrayed by Government user fees.

(2) Not later than 90 days after submitting a report for a fiscal year, the Secretary shall submit to Congress recommendations for corrective legislation if the report includes a finding that—

(A) there has been an impact from the fees on the financial health of the railroad industry or its competitive position relative to each competing mode of transportation; or

(B) there is a significant difference in the burden of Government user fees on the railroad industry and other competing modes of transportation.

(e) EXPIRATION.—This section expires on September 30, 1995.

#### **§20116. Annual report**

The Secretary of Transportation shall submit to the President for submission to Congress not later than July 1 of each year a report on carrying out this chapter for the prior calendar year. The report shall include the following information about the prior year:

(1) a thorough statistical compilation of railroad accidents, incidents, and casualties by cause.

(2) a list of railroad safety regulations and orders prescribed, issued, or in effect under this chapter.

(3) a summary of the reasons for each waiver granted under section 20103(d) of this title.

(4) an evaluation of the degree of compliance with railroad safety regulations prescribed and orders issued under this chapter.

(5) a summary of outstanding problems in carrying out railroad safety regulations prescribed and orders issued under this chapter, in order of priority.

(6) an analysis and evaluation of research and related activities completed, including their policy implications, and technological progress achieved.

(7) a list, with a brief statement of the issues, of completed or pending civil actions to enforce railroad safety regulations prescribed and orders issued under this chapter.

(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.

(9) a compilation of certifications filed under section 20105(a) of this title that were—

(A) in effect; or

(B) rejected in any part by the Secretary, and a summary of the reasons for each rejection.

(10) a compilation of agreements made under section 20105(c) of this title that were—

(A) in effect; or

(B) terminated in any part by the Secretary, and a summary of the reasons for each termination.

(11) recommendations for legislation the Secretary considers necessary to strengthen the national railroad safety program.

#### **§ 20117. Authorization of appropriations**

(a) GENERAL.—(1) Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter:

(A) \$68,283,000 for the fiscal year ending September 30, 1993.

(B) \$71,690,000 for the fiscal year ending September 30, 1994.

(2) Not more than \$5,000,000 may be appropriated to the Secretary for the fiscal year ending September 30, 1993, to carry out section 20105 of this title.

(b) GRADE CROSSING SAFETY.—Not more than \$1,000,000 may be appropriated to the Secretary for improvements in grade crossing safety, except demonstration projects under section 20134(c) of this title. Amounts appropriated under this subsection remain available until expended.

(c) RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION, AND STATE PARTICIPATION GRANTS.—Amounts appropriated under this section for research and development, automated track inspection, and grants under section 20105(e) of this title remain available until expended.

(d) MINIMUM AVAILABLE FOR CERTAIN PURPOSES.—At least 50 percent of the amounts appropriated to the Secretary for a fiscal year to carry out railroad research and development programs under this chapter or another law shall be available for safety research, improved track inspection and information acquisition technology, improved railroad freight transportation, and improved railroad passenger systems.

#### **SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY**

#### **§ 20131. Restricted access to rolling equipment**

The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that when railroad carrier employees (except train or yard crews) assigned to inspect, test, repair, or service rolling equipment have to work on, under, or between that equipment, every manually operated switch, including each crossover switch, providing access to the track on which the equipment is located is lined against movement to that track and secured by an effective locking device that can be removed only by the class or craft of employees performing the inspection, testing, repair, or service.

1   **§ 20132. Visible markers for rear cars**

2       (a) GENERAL.—The Secretary of Transportation shall prescribe regula-  
3       tions and issue orders that may be necessary to require that—

4           (1) the rear car of each passenger and commuter train has at least  
5           one highly visible marker that is lighted during darkness and when  
6           weather conditions restrict clear visibility; and

7           (2) the rear car of each freight train has highly visible markers dur-  
8           ing darkness and when weather conditions restrict clear visibility.

9       (b) PREEMPTION.—Notwithstanding section 20106 of this title, sub-  
10       section (a) of this section does not prohibit a State from continuing in force  
11       a law, regulation, or order in effect on July 8, 1976, related to lighted  
12       markers on the rear car of a freight train except to the extent it would  
13       cause the car to be in violation of this section.

14   **§ 20133. Passenger equipment**

15       (a) GENERAL.—The Secretary of Transportation shall prescribe regula-  
16       tions and issue orders that may be necessary to ensure that the construc-  
17       tion, maintenance, and operation of railroad equipment used to transport  
18       railroad passengers, whether in commuter or intercity service, maximize the  
19       safety of those passengers. The Secretary periodically shall review the regu-  
20       lations and orders and make amendments that may be necessary.

21       (b) CONSIDERATIONS AND AREAS OF CONCENTRATION.—In prescribing  
22       regulations, issuing orders, and making amendments under this section, the  
23       Secretary shall—

24           (1) consider comparable regulations and procedures of the United  
25           States Government that apply to other modes of transportation, espe-  
26           cially those regulations and procedures carried out by the Adminis-  
27           trator of the Federal Aviation Administration;

28           (2) consider relevant differences between commuter and intercity  
29           passenger service;

30           (3) concentrate on those areas that the Secretary believes present the  
31           greatest opportunity for enhancing the safety of the equipment; and

32           (4) give significant weight to the expenditures that would be nec-  
33           essary to retrofit existing equipment and to change specifications for  
34           equipment on order.

35       (c) CONSULTATION.—In prescribing regulations, issuing orders, and mak-  
36       ing amendments under this section, the Secretary may consult with Amtrak,  
37       public authorities operating railroad passenger service, other railroad car-  
38       riers transporting passengers, organizations of passengers, and organiza-  
39       tions of employees. A consultation is not subject to the Federal Advisory  
40       Committee Act (5 App. U.S.C.), but minutes of the consultation shall be  
41       placed in the public docket of the regulatory proceeding.

1   **§ 20134. Grade crossings and railroad rights of way**

2       (a) GENERAL.—To the extent practicable, the Secretary of Transpor-  
3       tation shall maintain a coordinated effort to develop and carry out solutions  
4       to the railroad grade crossing problem and measures to protect pedestrians  
5       in densely populated areas along railroad rights of way. To carry out this  
6       subsection, the Secretary may use the authority of the Secretary under this  
7       chapter and over highway, traffic, and motor vehicle safety and over high-  
8       way construction.

9       (b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22,  
10       1989, the Secretary shall prescribe regulations and issue orders to ensure  
11       the safe maintenance, inspection, and testing of signal systems and devices  
12       at railroad highway grade crossings.

13       (c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish dem-  
14       onstration projects to evaluate whether accidents and incidents involving  
15       trains would be reduced by—

16           (A) reflective markers installed on the road surface or on a signal  
17           post at railroad grade crossings;

18           (B) stop signs or yield signs installed at grade crossings; and

19           (C) speed bumps or rumble strips installed on the road surfaces at  
20           the approaches to grade crossings.

21       (2) Not later than June 22, 1990, the Secretary shall submit a report  
22       on the results of the demonstration projects to the Committee on Energy  
23       and Commerce of the House of Representatives and the Committee on Com-  
24       merce, Science, and Transportation of the Senate.

25   **§ 20135. Licensing or certification of locomotive operators**

26       (a) GENERAL.—The Secretary of Transportation shall prescribe regula-  
27       tions and issue orders to establish a program requiring the licensing or cer-  
28       tification, after one year after the program is established, of any operator  
29       of a locomotive.

30       (b) PROGRAM REQUIREMENTS.—The program established under sub-  
31       section (a) of this section—

32           (1) shall be carried out through review and approval of each railroad  
33           carrier's operator qualification standards;

34           (2) shall provide minimum training requirements;

35           (3) shall require comprehensive knowledge of applicable railroad car-  
36           rier operating practices and rules;

37           (4) except as provided in subsection (c)(1) of this section, shall re-  
38           quire consideration, to the extent the information is available, of the  
39           motor vehicle driving record of each individual seeking licensing or cer-  
40           tification, including—

(A) any denial, cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the prior 5 years; and

(B) any conviction within the prior 5 years of an offense described in section 30304(a)(3)(A) or (B) of this title;

(5) may require, based on the individual's driving record, disqualification or the granting of a license or certification conditioned on requirements the Secretary prescribes; and

(6) shall require an individual seeking a license or certification—

(A) to request the chief driver licensing official of each State in which the individual has held a motor vehicle operator's license within the prior 5 years to provide information about the individual's driving record to the individual's employer, prospective employer, or the Secretary, as the Secretary requires; and

(B) to make the request provided for in section 30305(b)(4) of this title for information to be sent to the individual's employer, prospective employer, or the Secretary, as the Secretary requires.

(c) WAIVERS.—(1) The Secretary shall prescribe standards and establish procedures for waiving subsection (b)(4) of this section for an individual or class of individuals who the Secretary decides are not currently unfit to operate a locomotive. However, the Secretary may waive subsection (b)(4) for an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (2)(A) or (B) of this subsection only if the individual or class, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary.

(2) If an individual, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary, the individual may not be denied a license or certification under subsection (b)(4) of this section because of—

(A) a conviction for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance; or

(B) the cancellation, revocation, or suspension of the individual's motor vehicle operator's license for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(d) OPPORTUNITY FOR HEARING.—An individual denied a license or certification or whose license or certification is conditioned on requirements prescribed under subsection (b)(4) of this section shall be entitled to a hear-

ing under section 20103(e) of this title to decide whether the license has been properly denied or conditioned.

(e) OPPORTUNITY TO EXAMINE AND COMMENT ON INFORMATION.—The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under subsection (b)(6) of this section available to the individual. The individual shall be given an opportunity to comment in writing about the information. Any comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains information to which the comment is related.

#### **§ 20136. Automatic train control and related systems**

The Secretary of Transportation shall prescribe regulations and issue orders to require that—

(1) an individual performing a test of an automatic train stop, train control, or cab signal apparatus required by the Secretary to be performed before entering territory where the apparatus will be used shall certify in writing that the test was performed properly; and

(2) the certification required under clause (1) of this subsection shall be maintained in the same way and place as the daily inspection report for the locomotive.

#### **§ 20137. Event recorders**

(a) DEFINITION.—In this section, “event recorder” means a device that—

(1) records train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary of Transportation considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

(2) is designed to resist tampering.

(b) REGULATIONS AND ORDERS.—Not later than December 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to enhance safety by requiring that a train be equipped with an event recorder not later than one year after the regulations are prescribed and the orders are issued. However, if the Secretary finds it is impracticable to equip trains within that one-year period, the Secretary may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued.

#### **§ 20138. Tampering with safety and operational monitoring devices**

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders to prohibit the willful tampering with, or disabling of, any specified railroad safety or operational monitoring device.

(b) PENALTIES.—(1) A railroad carrier operating a train on which a safety or operational monitoring device is tampered with or disabled in violation



1 of a regulation prescribed or order issued under subsection (a) of this sec-  
 2 tion is liable to the United States Government for a civil penalty under sec-  
 3 tion 21301 of this title.

4 (2) An individual tampering with or disabling a safety or operational  
 5 monitoring device in violation of a regulation prescribed or order issued  
 6 under subsection (a) of this section, or knowingly operating or allowing to  
 7 be operated a train on which such a device has been tampered with or dis-  
 8 abled, is liable for penalties established by the Secretary. The penalties may  
 9 include—

10 (A) a civil penalty under section 21301 of this title;

11 (B) suspension from work; and

12 (C) suspension or loss of a license or certification issued under sec-  
 13 tion 20135 of this title.

14 **§ 20139. Maintenance-of-way operations on railroad bridges**

15 (a) GENERAL.—Not later than June 22, 1989, the Secretary of Trans-  
 16 portation shall prescribe regulations and issue orders for the safety of main-  
 17 tenance-of-way employees on railroad bridges. The Secretary at least shall  
 18 provide in those regulations standards for bridge safety equipment, includ-  
 19 ing nets, walkways, handrails, and safety lines, and requirements for the use  
 20 of vessels when work is performed on bridges located over bodies of water.

21 (b) BLUE SIGNAL PROTECTION.—The Secretary shall prescribe regula-  
 22 tions applying blue signal protection to on-track vehicles where rest is pro-  
 23 vided.

24 **§ 20140. Alcohol and controlled substances testing**

25 (a) DEFINITION.—In this section, “controlled substance” means any sub-  
 26 stance under section 102 of the Comprehensive Drug Abuse Prevention and  
 27 Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Trans-  
 28 portation.

29 (b) GENERAL.—(1) In the interest of safety, the Secretary of Transpor-  
 30 tation shall prescribe regulations and issue orders, not later than October  
 31 28, 1992, related to alcohol and controlled substances use in railroad oper-  
 32 ations. The regulations shall establish a program requiring—

33 (A) a railroad carrier to conduct preemployment, reasonable sus-  
 34 picion, random, and post-accident testing of all railroad employees re-  
 35 sponsible for safety-sensitive functions (as decided by the Secretary) for  
 36 the use of alcohol or a controlled substance in violation of law or a  
 37 United States Government regulation; and

38 (B) when the Secretary considers it appropriate, disqualification for  
 39 an established period of time or dismissal of any employee found—

40 (i) to have used or been impaired by alcohol when on duty; or

1 (ii) to have used a controlled substance, whether or not on duty,  
2 except as allowed for medical purposes by law or a regulation or  
3 order under this chapter.

4 (2) When the Secretary of Transportation considers it appropriate in the  
5 interest of safety, the Secretary may prescribe regulations and issue orders  
6 requiring railroad carriers to conduct periodic recurring testing of railroad  
7 employees responsible for safety-sensitive functions (as decided by the Sec-  
8 retary) for the use of alcohol or a controlled substance in violation of law  
9 or a Government regulation.

10 (c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out this  
11 section, the Secretary of Transportation shall develop requirements that  
12 shall—

13 (1) promote, to the maximum extent practicable, individual privacy  
14 in the collection of specimens;

15 (2) for laboratories and testing procedures for controlled substances,  
16 incorporate the Department of Health and Human Services scientific  
17 and technical guidelines dated April 11, 1988, and any amendments to  
18 those guidelines, including mandatory guidelines establishing—

19 (A) comprehensive standards for every aspect of laboratory con-  
20 trolled substances testing and laboratory procedures to be applied  
21 in carrying out this section, including standards requiring the use  
22 of the best available technology to ensure the complete reliability  
23 and accuracy of controlled substances tests and strict procedures  
24 governing the chain of custody of specimens collected for con-  
25 trolled substances testing;

26 (B) the minimum list of controlled substances for which individ-  
27 uals may be tested; and

28 (C) appropriate standards and procedures for periodic review of  
29 laboratories and criteria for certification and revocation of certifi-  
30 cation of laboratories to perform controlled substances testing in  
31 carrying out this section;

32 (3) require that a laboratory involved in controlled substances testing  
33 under this section have the capability and facility, at the laboratory,  
34 of performing screening and confirmation tests;

35 (4) provide that all tests indicating the use of alcohol or a controlled  
36 substance in violation of law or a Government regulation be confirmed  
37 by a scientifically recognized method of testing capable of providing  
38 quantitative information about alcohol or a controlled substance;

39 (5) provide that each specimen be subdivided, secured, and labeled  
40 in the presence of the tested individual and that a part of the specimen  
41 be retained in a secure manner to prevent the possibility of tampering,

1 so that if the individual's confirmation test results are positive the indi-  
2 vidual has an opportunity to have the retained part tested by a 2d con-  
3 firmation test done independently at another certified laboratory if the  
4 individual requests the 2d confirmation test not later than 3 days after  
5 being advised of the results of the first confirmation test;

6 (6) ensure appropriate safeguards for testing to detect and quantify  
7 alcohol in breath and body fluid samples, including urine and blood,  
8 through the development of regulations that may be necessary and in  
9 consultation with the Secretary of Health and Human Services;

10 (7) provide for the confidentiality of test results and medical infor-  
11 mation (other than information about alcohol or a controlled substance)  
12 of employees, except that this clause does not prevent the use of test  
13 results for the orderly imposition of appropriate sanctions under this  
14 section; and

15 (8) ensure that employees are selected for tests by nondiscriminatory  
16 and impartial methods, so that no employee is harassed by being treat-  
17 ed differently from other employees in similar circumstances.

18 (d) REHABILITATION.—The Secretary of Transportation shall prescribe  
19 regulations or issue orders establishing requirements for rehabilitation pro-  
20 grams that at least provide for the identification and opportunity for treat-  
21 ment of railroad employees responsible for safety-sensitive functions (as de-  
22 cided by the Secretary) in need of assistance in resolving problems with the  
23 use of alcohol or a controlled substance in violation of law or a Government  
24 regulation. The Secretary shall decide on the circumstances under which  
25 employees shall be required to participate in a program. Each railroad car-  
26 rier is encouraged to make such a program available to all of its employees  
27 in addition to employees responsible for safety-sensitive functions. This sub-  
28 section does not prevent a railroad carrier from establishing a program  
29 under this subsection in cooperation with another railroad carrier.

30 (e) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS AND REGULA-  
31 TIONS.—In carrying out this section, the Secretary of Transportation—

32 (1) shall establish only requirements that are consistent with inter-  
33 national obligations of the United States; and

34 (2) shall consider applicable laws and regulations of foreign coun-  
35 tries.

36 (f) OTHER REGULATIONS ALLOWED.—This section does not prevent the  
37 Secretary of Transportation from continuing in effect, amending, or further  
38 supplementing a regulation prescribed or order issued before October 28,  
39 1991, governing the use of alcohol or a controlled substance in railroad op-  
40 erations.

1   **§ 20141. Power brake safety**

2       (a) REVIEW AND REVISION OF EXISTING REGULATIONS.—The Secretary  
3 of Transportation shall review existing regulations on railroad power brakes  
4 and, not later than December 31, 1993, revise the regulations based on  
5 safety information presented during the review. Where applicable, the Sec-  
6 retary shall prescribe regulations that establish standards on dynamic brak-  
7 ing equipment.

8       (b) 2-WAY END-OF-TRAIN DEVICES.—(1) The Secretary shall require 2-  
9 way end-of-train devices (or devices able to perform the same function) on  
10 road trains, except locals, road switchers, or work trains, to enable the initi-  
11 ation of emergency braking from the rear of a train. The Secretary shall  
12 prescribe regulations as soon as possible, but not later than December 31,  
13 1993, requiring the 2-way end-of-train devices. The regulations at least  
14 shall—

15           (A) establish standards for the devices based on performance;

16           (B) prohibit a railroad carrier, on or after the date that is one year  
17 after the regulations are prescribed, from acquiring any end-of-train  
18 device for use on trains that is not a 2-way device meeting the stand-  
19 ards established under clause (A) of this paragraph;

20           (C) require that the trains be equipped with 2-way end-of-train de-  
21 vices meeting those standards not later than 4 years after the regula-  
22 tions are prescribed; and

23           (D) provide that any 2-way end-of-train device acquired for use on  
24 trains before the regulations are prescribed shall be deemed to meet the  
25 standards.

26       (2) The Secretary may consider petitions to amend the regulations pre-  
27 scribed under paragraph (1) of this subsection to allow the use of alter-  
28 native technologies that meet the same basic performance requirements es-  
29 tablished by the regulations.

30       (3) In developing the regulations required by paragraph (1) of this sub-  
31 section, the Secretary shall consider information presented under subsection  
32 (a) of this section.

33       (c) EXCLUSIONS.—The Secretary may exclude from regulations pre-  
34 scribed under subsections (a) and (b) of this section any category of trains  
35 or rail operations if the Secretary decides that the exclusion is in the public  
36 interest and is consistent with railroad safety. The Secretary shall make  
37 public the reasons for the exclusion. The Secretary at least shall exclude  
38 from the regulations prescribed under subsection (b)—

39           (1) trains that have manned cabooses;

40           (2) passenger trains with emergency brakes;

(3) trains that operate only on track that is not part of the general railroad system;

(4) trains that do not exceed 30 miles an hour and do not operate on heavy grades, except for any categories of trains specifically designated by the Secretary; and

(5) trains that operate in a push mode.

#### **§ 20142. Track safety**

(a) REVIEW OF EXISTING REGULATIONS.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—

(1) procedures associated with maintaining and installing continuous welded rail and its attendant structure;

(2) the need for revisions to regulations on track excepted from track safety standards; and

(3) employee safety.

(b) REVISION OF REGULATIONS.—Not later than September 3, 1994, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection (c) of this section.

(c) COMPTROLLER GENERAL'S STUDY AND REPORT.—The Comptroller General shall study the effectiveness of the Secretary's enforcement of track safety standards, with particular attention to recent relevant railroad accident experience and information. Not later than September 3, 1993, the Comptroller General shall submit a report to Congress and the Secretary on the results of the study, with recommendations for improving enforcement of those standards.

#### **§ 20143. Locomotive visibility**

(a) DEFINITION.—In this section, “locomotive visibility” means the enhancement of day and night visibility of the front end unit of a train, considering in particular the visibility and perspective of a driver of a motor vehicle at a grade crossing.

(b) INTERIM REGULATIONS.—Not later than December 31, 1992, the Secretary of Transportation shall prescribe temporary regulations identifying ditch, crossing, strobe, and oscillating lights as temporary locomotive visibility measures and authorizing and encouraging the installation and use of those lights. Subchapter II of chapter 5 of title 5 does not apply to a temporary regulation or to an amendment to a temporary regulation.

(c) REVIEW OF REGULATIONS.—The Secretary shall review the Secretary's regulations on locomotive visibility. Not later than December 31,

1993, the Secretary shall complete the current research of the Department of Transportation on locomotive visibility. In conducting the review, the Secretary shall collect relevant information from operational experience by rail carriers using enhanced visibility measures.

(d) REGULATORY PROCEEDING.—Not later than June 30, 1994, the Secretary shall begin a regulatory proceeding to prescribe final regulations requiring substantially enhanced locomotive visibility measures. In the proceeding, the Secretary shall consider at least—

(1) revisions to the existing locomotive headlight standards, including standards for placement and intensity;

(2) requiring the use of reflective material to enhance locomotive visibility;

(3) requiring the use of additional alerting lights, including ditch, crossing, strobe, and oscillating lights;

(4) requiring the use of auxiliary lights to enhance locomotive visibility when viewed from the side;

(5) the effect of an enhanced visibility measure on the vision, health, and safety of train crew members; and

(6) separate standards for self-propelled, push-pull, and multi-unit passenger operations without a dedicated head end locomotive.

(e) FINAL REGULATIONS.—(1) Not later than June 30, 1995, the Secretary shall prescribe final regulations requiring enhanced locomotive visibility measures. The Secretary shall require that not later than December 31, 1997, a locomotive not excluded from the regulations be equipped with temporary visibility measures under subsection (b) of this section or the visibility measures the final regulations require.

(2) In prescribing regulations under paragraph (1) of this subsection, the Secretary may exclude a category of trains or rail operations from a specific visibility requirement if the Secretary decides the exclusion is in the public interest and is consistent with rail safety, including grade-crossing safety.

(3) A locomotive equipped with temporary visibility measures prescribed under subsection (b) of this section when final regulations are prescribed under paragraph (1) of this subsection is deemed to be complying with the final regulations for 4 years after the final regulations are prescribed.

## **CHAPTER 203—SAFETY APPLIANCES**

Sec.

20301. Definition and nonapplication.

20302. General requirements.

20303. Exemption for moving defective and insecure vehicles needing repairs.

20304. Assumption of risk by employees.

20305. Inspection of mail cars.

1 **§ 20301. Definition and nonapplication**

2 (a) DEFINITION.—In this chapter, “vehicle” means a car, locomotive, ten-  
3 der, or similar vehicle.

4 (b) NONAPPLICATION.—This chapter does not apply to the following:

5 (1) a train of 4-wheel coal cars.

6 (2) a train of 8-wheel standard logging cars if the height of each car  
7 from the top of the rail to the center of the coupling is not more than  
8 25 inches.

9 (3) a locomotive used in hauling a train referred to in clause (2) of  
10 this subsection when the locomotive and cars of the train are used only  
11 to transport logs.

12 **§ 20302. General requirements**

13 (a) GENERAL.—Except as provided in subsection (c) of this section and  
14 section 20303 of this title, a railroad carrier may use or allow to be used  
15 on any of its railroad lines—

16 (1) a vehicle only if it is equipped with—

17 (A) couplers coupling automatically by impact, and capable of  
18 being uncoupled, without the necessity of individuals going be-  
19 tween the ends of the vehicles;

20 (B) secure sill steps and efficient hand brakes; and

21 (C) secure ladders and running boards when required by the  
22 Secretary of Transportation, and, if ladders are required, secure  
23 handholds or grab irons on its roof at the top of each ladder;

24 (2) except as otherwise ordered by the Secretary, a vehicle only if  
25 it is equipped with secure grab irons or handholds on its ends and sides  
26 for greater security to individuals in coupling and uncoupling vehicles;

27 (3) a vehicle only if it complies with the standard height of drawbars  
28 required by regulations prescribed by the Secretary;

29 (4) a locomotive only if it is equipped with a power-driving wheel  
30 brake and appliances for operating the train-brake system; and

31 (5) a train only if—

32 (A) enough of the vehicles in the train are equipped with power  
33 or train brakes so that the engineer on the locomotive hauling the  
34 train can control the train’s speed without the necessity of brake  
35 operators using the common hand brakes for that purpose; and

36 (B) at least 50 percent of the vehicles in the train are equipped  
37 with power or train brakes and the engineer is using the power  
38 or train brakes on those vehicles and on all other vehicles equipped  
39 with them that are associated with those vehicles in the train.

40 (b) REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.—A  
41 railroad carrier complying with subsection (a)(5)(A) of this section may

1 refuse to receive from a railroad line of a connecting railroad carrier or a  
 2 shipper a vehicle that is not equipped with power or train brakes that will  
 3 work and readily interchange with the power or train brakes in use on the  
 4 vehicles of the complying railroad carrier.

5 (c) COMBINED VEHICLES LOADING AND HAULING LONG COMMOD-  
 6 ITIES.—Notwithstanding subsection (a)(1)(B) of this section, when vehicles  
 7 are combined to load and haul long commodities, only one of the vehicles  
 8 must have hand brakes during the loading and hauling.

9 (d) AUTHORITY TO CHANGE REQUIREMENTS.—The Secretary may—

10 (1) change the number, dimensions, locations, and manner of appli-  
 11 cation prescribed by the Secretary for safety appliances required by  
 12 subsection (a)(1)(B) and (C) and (2) of this section only for good cause  
 13 and after providing an opportunity for a full hearing;

14 (2) amend regulations for installing, inspecting, maintaining, and re-  
 15 pairing power and train brakes only for the purpose of achieving safety;  
 16 and

17 (3) increase, after an opportunity for a full hearing, the minimum  
 18 percentage of vehicles in a train that are required by subsection  
 19 (a)(5)(B) of this section to be equipped and used with power or train  
 20 brakes.

21 (e) SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.—In carrying  
 22 out subsection (d)(2) and (3) of this section, the Secretary may use the  
 23 services of the Association of American Railroads.

24 **§ 20303. Exemption for moving defective and insecure vehi-**  
 25 **cles needing repairs**

26 (a) GENERAL.—A vehicle that is equipped in compliance with this chapter  
 27 whose equipment becomes defective or insecure nevertheless may be moved  
 28 when necessary to make repairs, without a penalty being imposed under sec-  
 29 tion 20306 of this title, from the place at which the defect or insecurity was  
 30 first discovered to the nearest available place at which the repairs can be  
 31 made—

32 (1) on the railroad line on which the defect or insecurity was discov-  
 33 ered; or

34 (2) at the option of a connecting railroad carrier, on the railroad line  
 35 of the connecting carrier, if not farther than the place of repair de-  
 36 scribed in clause (1) of this subsection.

37 (b) USE OF CHAINS INSTEAD OF DRAWBARS.—A vehicle in a revenue  
 38 train or in association with commercially-used vehicles may be moved under  
 39 this section with chains instead of drawbars only when the vehicle contains  
 40 livestock or perishable freight.



(c) LIABILITY.—The movement of a vehicle under this section is at the risk only of the railroad carrier doing the moving. This section does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of a vehicle with equipment that is defective, insecure, or not maintained in compliance with this chapter.

**§ 20304. Assumption of risk by employees**

An employee of a railroad carrier injured by a vehicle or train used in violation of section 20302(a)(1)(A), (2), (4), or (5)(A) of this title does not assume the risk of injury resulting from the violation, even if the employee continues to be employed by the carrier after learning of the violation.

**§ 20305. Inspection of mail cars**

The Secretary of Transportation shall inspect the construction, adaptability, design, and condition of mail cars used on railroads in the United States. The Secretary shall make a report on the inspection and submit a copy of the report to the United States Postal Service.

**CHAPTER 205—SIGNAL SYSTEMS**

Sec.

20501. Definition.

20502. Requirements for installation and use.

20503. Amending regulations and changing requirements.

20504. Inspection, testing, and investigation.

20505. Reports of malfunctions and accidents.

**§ 20501. Definition**

In this chapter, “signal system” means a block signal system, an interlocking, automatic train stop, train control, or cab-signal device, or a similar appliance, method, device, or system intended to promote safety in railroad operations.

**§ 20502. Requirements for installation and use**

(a) INSTALLATION.—(1) When the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install, on any part of its railroad line, a signal system that complies with requirements of the Secretary. The order must allow the carrier a reasonable time to complete the installation. A carrier may discontinue or materially alter a signal system required under this paragraph only with the approval of the Secretary.

(2) A railroad carrier ordered under paragraph (1) of this subsection to install a signal system on one part of its railroad line may not be held negligent for not installing the system on any part of its line that was not included in the order. If an accident or incident occurs on a part of the line on which the signal system was not required to be installed and was not

1 installed, the use of the system on another part of the line may not be con-  
 2 sidered in a civil action brought because of the accident or incident.

3 (b) USE.—A railroad carrier may allow a signal system to be used on its  
 4 railroad line only when the system, including its controlling and operating  
 5 appurtenances—

6 (1) may be operated safely without unnecessary risk of personal in-  
 7 jury; and

8 (2) has been inspected and can meet any test prescribed under this  
 9 chapter.

### 10 **§ 20503. Amending regulations and changing requirements**

11 The Secretary of Transportation may amend a regulation or change a re-  
 12 quirement applicable to a railroad carrier for installing, maintaining, in-  
 13 specting, or repairing a signal system under this chapter—

14 (1) when the carrier files with the Secretary a request for the  
 15 amendment or change and the Secretary approves the request; or

16 (2) on the Secretary's own initiative for good cause shown.

### 17 **§ 20504. Inspection, testing, and investigation**

18 (a) SYSTEMS IN USE.—(1) The Secretary of Transportation may—

19 (A) inspect and test a signal system used by a railroad carrier; and

20 (B) decide whether the system is in safe operating condition.

21 (2) In carrying out this subsection, the Secretary may employ only an in-  
 22 dividual who—

23 (A) has no interest in a patented article required to be used on or  
 24 with a signal system; and

25 (B) has no financial interest in a railroad carrier or in a concern  
 26 dealing in railroad supplies.

27 (b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Sec-  
 28 retary may investigate, test, and report on the use of and need for a signal  
 29 system, without cost to the United States Government, when the system is  
 30 submitted in completed shape for investigation and testing.

### 31 **§ 20505. Reports of malfunctions and accidents**

32 In the way and to the extent required by the Secretary of Transportation,  
 33 a railroad carrier shall report to the Secretary a failure of a signal system  
 34 to function as intended. If the failure results in an accident or incident  
 35 causing injury to an individual or property that is required to be reported  
 36 under regulations prescribed by the Secretary, the carrier owning or main-  
 37 taining the signal system shall report to the Secretary immediately in writ-  
 38 ing the fact of the accident or incident.

## 39 **CHAPTER 207—LOCOMOTIVES**

Sec.  
 20701. Requirements for use.

20702. Inspections, repairs, and inspection and repair reports.

20703. Accident reports and investigations.

**§ 20701. Requirements for use**

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—

(1) are in proper condition and safe to operate without unnecessary danger of personal injury;

(2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

(3) can withstand every test prescribed by the Secretary under this chapter.

**§ 20702. Inspections, repairs, and inspection and repair reports**

(a) GENERAL.—The Secretary of Transportation shall—

(1) become familiar, so far as practicable, with the condition of every locomotive and tender and its parts and appurtenances;

(2) inspect every locomotive and tender and its parts and appurtenances as necessary to carry out this chapter, but not necessarily at stated times or at regular intervals; and

(3) ensure that every railroad carrier makes inspections of locomotives and tenders and their parts and appurtenances as required by regulations prescribed by the Secretary and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again.

(b) NONCOMPLYING LOCOMOTIVES, TENDERS, AND PARTS.—(1) When the Secretary finds that a locomotive, tender, or locomotive or tender part or appurtenance owned or operated by a railroad carrier does not comply with this chapter or a regulation prescribed under this chapter, the Secretary shall give the carrier written notice describing any defect resulting in noncompliance. Not later than 5 days after receiving the notice of noncompliance, the carrier may submit a written request for a reinspection. On receiving the request, the Secretary shall provide for the reinspection by an officer or employee of the Department of Transportation who did not make the original inspection. The reinspection shall be made not later than 15 days after the date the Secretary gives the notice of noncompliance.

(2) Immediately after the reinspection is completed, the Secretary shall give written notice to the railroad carrier stating whether the locomotive, tender, part, or appurtenance is in compliance. If the original finding of noncompliance is sustained, the carrier has 30 days after receipt of the no-

1 tice to file an appeal with the Secretary. If the carrier files an appeal, the  
 2 Secretary, after providing an opportunity for a proceeding, may revise or  
 3 set aside the finding of noncompliance.

4 (3) A locomotive, tender, part, or appurtenance found not in compliance  
 5 under this subsection may be used only after it is—

6 (A) repaired to comply with this chapter and regulations prescribed  
 7 under this chapter; or

8 (B) found on reinspection or appeal to be in compliance.

9 (c) REPORTS.—A railroad carrier shall make and keep, in the way the  
 10 Secretary prescribes by regulation, a report of every—

11 (1) inspection made under regulations prescribed by the Secretary;  
 12 and

13 (2) repair made of a defect disclosed by such an inspection.

14 (d) CHANGES IN INSPECTION PROCEDURES.—A railroad carrier may  
 15 change a rule or instruction of the carrier governing the inspection by the  
 16 carrier of the locomotives and tenders and locomotive and tender parts and  
 17 appurtenances of the carrier when the Secretary approves a request filed by  
 18 the carrier to make the change.

19 **§ 20703. Accident reports and investigations**

20 (a) ACCIDENT REPORTS AND SCENE PRESERVATION.—When the failure  
 21 of a locomotive, tender, or locomotive or tender part or appurtenance results  
 22 in an accident or incident causing serious personal injury or death, the rail-  
 23 road carrier owning or operating the locomotive or tender—

24 (1) immediately shall file with the Secretary of Transportation a  
 25 written statement of the fact of the accident or incident; and

26 (2) when the locomotive is disabled to the extent it cannot be oper-  
 27 ated under its own power, shall preserve intact all parts affected by the  
 28 accident or incident, if possible without interfering with traffic, until  
 29 an investigation of the accident or incident is completed.

30 (b) INVESTIGATIONS.—The Secretary shall—

31 (1) investigate each accident and incident reported under subsection  
 32 (a) of this section;

33 (2) inspect each part affected by the accident or incident; and

34 (3) make a complete and detailed report on the cause of the accident  
 35 or incident.

36 (c) PUBLICATION AND USE OF INVESTIGATION REPORTS.—When the  
 37 Secretary considers publication to be in the public interest, the Secretary  
 38 may publish a report of an investigation made under this section, stating  
 39 the cause of the accident or incident and making appropriate recommenda-  
 40 tions. No part of a report may be admitted into evidence or used in a civil  
 41 action for damages resulting from a matter mentioned in the report.

## CHAPTER 209—ACCIDENTS AND INCIDENTS

Sec.

20901. Reports.

20902. Investigations.

20903. Reports not evidence in civil actions for damages.

### § 20901. Reports

(a) GENERAL REQUIREMENTS.—Not later than 30 days after the end of each month, a railroad carrier shall file a report with the Secretary of Transportation on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month. The report shall be under oath and shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.

(b) MONETARY THRESHOLD FOR REPORTING.—(1) In establishing or changing a monetary threshold for the reporting of a railroad accident or incident, the Secretary shall base damage cost calculations only on publicly available information obtained from—

(A) the Bureau of Labor Statistics; or

(B) another department, agency, or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.

(2) If information is not available as provided in paragraph (1)(A) or (B) of this subsection, the Secretary may use any other source to obtain the information. However, use of the information shall be subject to public notice and an opportunity for written comment.

### § 20902. Investigations

(a) GENERAL AUTHORITY.—The Secretary of Transportation, or an impartial investigator authorized by the Secretary, may investigate—

(1) an accident or incident resulting in serious injury to an individual or to railroad property, occurring on the railroad line of a railroad carrier; and

(2) an accident or incident reported under section 20505 of this title.

(b) OTHER DUTIES AND POWERS.—In carrying out an investigation, the Secretary or authorized investigator may subpoena witnesses, require the production of records, exhibits, and other evidence, administer oaths, and take testimony. If the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the

investigation at the same time as, and in coordination with, the commission's investigation. The railroad carrier on whose railroad line the accident or incident occurred shall provide reasonable facilities to the Secretary for the investigation.

(c) REPORTS.—When in the public interest, the Secretary shall make a report of the investigation, stating the cause of the accident or incident and making recommendations the Secretary considers appropriate. The Secretary shall publish the report in a way the Secretary considers appropriate.

**§20903. Reports not evidence in civil actions for damages**

No part of an accident or incident report filed by a railroad carrier under section 20901 of this title or made by the Secretary of Transportation under section 20902 of this title may be used in a civil action for damages resulting from a matter mentioned in the report.

**CHAPTER 211—HOURS OF SERVICE**

Sec.

21101. Definitions.

21102. Nonapplication and exemption.

21103. Limitations on duty hours of train employees.

21104. Limitations on duty hours of signal employees.

21105. Limitations on duty hours of dispatching service employees.

21106. Limitations on employee sleeping quarters.

21107. Maximum duty hours and subjects of collective bargaining.

**§21101. Definitions**

In this chapter—

(1) “designated terminal” means the home or away-from-home terminal for the assignment of a particular crew.

(2) “dispatching service employee” means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

(3) “employee” means a dispatching service employee, a signal employee, or a train employee.

(4) “signal employee” means an individual employed by a railroad carrier who is engaged in installing, repairing, or maintaining signal systems.

(5) “train employee” means an individual engaged in or connected with the movement of a train, including a hostler.

**§21102. Nonapplication and exemption**

(a) GENERAL.—This chapter does not apply to a situation involving any of the following:

- (1) a casualty.
- (2) an unavoidable accident.
- (3) an act of God.

1 (4) a delay resulting from a cause unknown and unforeseeable to a  
 2 railroad carrier or its officer or agent in charge of the employee when  
 3 the employee left a terminal.

4 (b) EXEMPTION.—The Secretary of Transportation may exempt a rail-  
 5 road carrier having not more than 15 employees covered by this chapter  
 6 from the limitations imposed by this chapter. The Secretary may allow the  
 7 exemption after a full hearing, for good cause shown, and on deciding that  
 8 the exemption is in the public interest and will not affect safety adversely.  
 9 The exemption shall be for a specific period of time and is subject to review  
 10 at least annually. The exemption may not authorize a carrier to require or  
 11 allow its employees to be on duty more than a total of 16 hours in a 24-  
 12 hour period.

13 **§ 21103. Limitations on duty hours of train employees**

14 (a) GENERAL.—Except as provided in subsection (c) of this section, a  
 15 railroad carrier and its officers and agents may not require or allow a train  
 16 employee to remain or go on duty—

17 (1) unless that employee has had at least 8 consecutive hours off  
 18 duty during the prior 24 hours; or

19 (2) after that employee has been on duty for 12 consecutive hours,  
 20 until that employee has had at least 10 consecutive hours off duty.

21 (b) DETERMINING TIME ON DUTY.—In determining under subsection (a)  
 22 of this section the time a train employee is on or off duty, the following  
 23 rules apply:

24 (1) Time on duty begins when the employee reports for duty and  
 25 ends when the employee is finally released from duty.

26 (2) Time the employee is engaged in or connected with the movement  
 27 of a train is time on duty.

28 (3) Time spent performing any other service for the railroad carrier  
 29 during a 24-hour period in which the employee is engaged in or con-  
 30 nected with the movement of a train is time on duty.

31 (4) Time spent in deadhead transportation to a duty assignment is  
 32 time on duty, but time spent in deadhead transportation from a duty  
 33 assignment to the place of final release is neither time on duty nor time  
 34 off duty.

35 (5) An interim period available for rest at a place other than a des-  
 36 ignated terminal is time on duty.

37 (6) An interim period available for less than 4 hours rest at a des-  
 38 ignated terminal is time on duty.

39 (7) An interim period available for at least 4 hours rest at a place  
 40 with suitable facilities for food and lodging is not time on duty when

the employee is prevented from getting to the employee's designated terminal by any of the following:

(A) a casualty.

(B) a track obstruction.

(C) an act of God.

(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) EMERGENCIES.—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

**§ 21104. Limitations on duty hours of signal employees**

(a) GENERAL.—(1) In paragraph (2)(C) of this subsection, “24-hour period” means the period beginning when a signal employee reports for duty immediately after 8 consecutive hours off duty or, when required under paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

(2) Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee to remain or go on duty—

(A) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours;

(B) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

(C) after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's



headquarters, is neither time on duty nor time off duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period of more than one hour is time off duty and does break the continuity of service.

(c) EMERGENCIES.—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service.

#### **§21105. Limitations on duty hours of dispatching service employees**

(a) APPLICATION.—This section applies, rather than section 21103 or 21104 of this title, to a train employee or signal employee during any period of time the employee is performing duties of a dispatching service employee.

(b) GENERAL.—Except as provided in subsection (d) of this section, a dispatching service employee may not be required or allowed to remain or go on duty for more than—

(1) a total of 9 hours during a 24-hour period in a tower, office, station, or place at which at least 2 shifts are employed; or

(2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which only one shift is employed.

(c) DETERMINING TIME ON DUTY.—Under subsection (b) of this section, time spent performing any other service for the railroad carrier during a

24-hour period in which the employee is on duty in a tower, office, station, or other place is time on duty in that tower, office, station, or place.

(d) EMERGENCIES.—When an emergency exists, a dispatching service employee may be allowed to remain or go on duty for not more than 4 additional hours during a period of 24 consecutive hours for not more than 3 days during a period of 7 consecutive days.

#### **§ 21106. Limitations on employee sleeping quarters**

A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary and give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

#### **§ 21107. Maximum duty hours and subjects of collective bargaining**

The number of hours established by this chapter that an employee may be required or allowed to be on duty is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad carrier and its employees.

### **CHAPTER 213—PENALTIES**

#### **SUBCHAPTER I—CIVIL PENALTIES**

Sec.

21301. Chapter 201 general violations.

21302. Chapter 201 accident and incident violations and chapter 203–209 violations.

21303. Chapter 211 violations.

21304. Willfulness requirement for penalties against individuals.

#### **SUBCHAPTER II—CRIMINAL PENALTIES**

21311. Records and reports.

#### **SUBCHAPTER I—CIVIL PENALTIES**

#### **§ 21301. Chapter 201 general violations**

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable

under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The amount of the penalty shall be at least \$500 but not more than \$10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$20,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than \$500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

**§ 21302. Chapter 201 accident and incident violations and chapter 203–209 violations**

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than \$10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$20,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

### **§21303. Chapter 211 violations**

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than \$10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$20,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty

that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

**§ 21304. Willfulness requirement for penalties against individuals**

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

SUBCHAPTER II—CRIMINAL PENALTIES

**§ 21311. Records and reports**

(a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by another means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing the report required by section 20901 of this title shall be fined not more than \$500 for each violation and not more than \$500 for each day during which the report is overdue.

PART B—ASSISTANCE

CHAPTER 221—LOCAL RAIL FREIGHT ASSISTANCE

Sec.

22101. Financial assistance for State projects.

22102. Eligibility.

22103. Applications.

22104. State rail plan financing.

22105. Sharing project costs.

22106. Limitations on financial assistance.

22107. Records, audits, and information.

22108. Authorization of appropriations.

**§ 22101. Financial assistance for State projects**

(a) GENERAL.—The Secretary of Transportation shall provide financial assistance to a State, as provided under this chapter, for a rail freight assistance project of the State when a rail carrier subject to subchapter I of chapter 105 of this title maintains a rail line in the State. The assistance is for the cost of—

(1) acquiring, in any way the State considers appropriate, an interest in a rail line or rail property to maintain existing, or to provide future, rail freight transportation, but only if the Interstate Commerce Commission has authorized, or exempted from the requirements of that authorization, the abandonment of, or the discontinuance of rail transportation on, the rail line related to the project;

(2) improving and rehabilitating rail property on a rail line to the extent necessary to allow adequate and efficient rail freight transportation on the line, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year; and

(3) building rail or rail-related facilities (including new connections between at least 2 existing rail lines, intermodal freight terminals, sidings, bridges, and relocation of existing lines) to improve the quality and efficiency of the rail freight transportation, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

(b) CALCULATING COST-BENEFIT RATIO.—The Secretary shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under this chapter. In establishing the methodology, the Secretary shall consider the need for equitable treatment of different regions of the United States and different commodities transported by rail. The establishment of the methodology is committed to the discretion of the Secretary.

(c) CONDITIONS.—(1) Assistance for a project shall be provided under this chapter only if—

(A) a rail carrier certifies that the rail line related to the project carried more than 20 carloads a mile during the most recent year during which transportation was provided by the carrier on the line; and

(B) the ratio of benefits to costs for the project, as calculated using the methodology established under subsection (b) of this section, is more than 1.0.

(2) If the rail carrier that provided the transportation on the rail line is no longer in existence, the applicant for the project shall provide the information required by the certification under paragraph (1)(A) of this subsection in the way the Secretary prescribes.

(3) The Secretary may waive the requirement of paragraph (1)(A) or (2) of this subsection if the Secretary—

(A) decides that the rail line has contractual guarantees of at least 40 carloads a mile for each of the first 2 years of operation of the proposed project; and

(B) finds that there is a reasonable expectation that the contractual guarantees will be fulfilled.

(d) LIMITATIONS ON AMOUNTS.—A State may not receive more than 15 percent of the amounts provided in a fiscal year under this chapter. Not more than 20 percent of the amounts available under this chapter may be provided in a fiscal year for any one project.

## **§ 22102. Eligibility**

A State is eligible to receive financial assistance under this chapter only when the State complies with regulations the Secretary of Transportation prescribes under this chapter and the Secretary decides that—

(1) the State has an adequate plan for rail transportation in the State and a suitable process for updating, revising, and modifying the plan;

(2) the State plan is administered or coordinated by a designated State authority and provides for a fair distribution of resources;

(3) the State authority—

(A) is authorized to develop, promote, supervise, and support safe, adequate, and efficient rail transportation;

(B) employs or will employ sufficient qualified and trained personnel;

(C) maintains or will maintain adequate programs of investigation, research, promotion, and development with opportunity for public participation; and

(D) is designated and directed to take all practicable steps (by itself or with other State authorities) to improve rail transpor-

tation safety and reduce energy use and pollution related to transportation; and

(4) the State has ensured that it maintains or will maintain adequate procedures for financial control, accounting, and performance evaluation for the proper use of assistance provided by the United States Government.

### **§ 22103. Applications**

(a) FILING.—A State must file an application with the Secretary of Transportation for financial assistance for a project described under section 22101(a) of this title not later than January 1 of the fiscal year for which amounts have been appropriated. However, for a fiscal year for which the authorization of appropriations for assistance under this chapter has not been enacted by the first day of the fiscal year, the State must file the application not later than 90 days after the date of enactment of a law authorizing the appropriations for that fiscal year. The Secretary shall prescribe the form of the application.

(b) CONSIDERATIONS.—In considering an application under this subsection, the Secretary shall consider the following:

(1) the percentage of rail lines that rail carriers have identified to the Interstate Commerce Commission for abandonment or potential abandonment in the State.

(2) the likelihood of future abandonments in the State.

(3) the ratio of benefits to costs for a proposed project calculated using the methodology established under section 22101(b) of this title.

(4) the likelihood that the rail line will continue operating with assistance.

(5) the impact of rail bankruptcies, rail restructuring, and rail mergers on the State.

### **§ 22104. State rail plan financing**

(a) ENTITLEMENT AND USES.—On the first day of each fiscal year, each State is entitled to \$36,000 of the amounts made available under section 22108 of this title during that fiscal year to be used—

(1) to establish, update, revise, and modify the State plan required by section 22102 of this title; or

(2) to carry out projects described in section 22101(a)(1), (2), or (3) of this title, as designated by the State, if those projects meet the requirements of section 22101(c)(1)(B) of this title.

(b) APPLICATIONS.—Each State must apply for amounts under this section not later than the first day of the fiscal year for which the amounts are available. However, for any fiscal year for which the authorization of appropriations for financial assistance under this chapter has not been en-



acted by the first day of the fiscal year, the State must apply for amounts under this section not later than 60 days after the date of enactment of a law authorizing the appropriations for that fiscal year. Not later than 60 days after receiving an application, the Secretary of Transportation shall consider the application and notify the State of the approval or disapproval of the application.

(c) AVAILABILITY OF AMOUNTS.—Amounts provided under this section remain available to a State for obligation for the first 3 months after the end of the fiscal year for which the amounts were made available. Amounts not applied for under this section or that remain unobligated after the first 3 months after the end of the fiscal year for which the amounts were made available are available to the Secretary for projects meeting the requirements of this chapter.

#### **§22105. Sharing project costs**

(a) GENERAL.—(1) The United States Government's share of the costs of financial assistance for a project under this chapter is 50 percent, except that for assistance provided under section 22101(a)(2) of this title, the Government's share is 70 percent. The State may pay its share of the costs in cash or through the following benefits, to the extent that the benefits otherwise would not be provided:

(A) forgiveness of taxes imposed on a rail carrier or its property.

(B) real and tangible personal property (provided by the State or a person for the State) necessary for the safe and efficient operation of rail freight transportation.

(C) track rights secured by the State for a rail carrier.

(D) the cash equivalent of State salaries for State employees working on the State project, except overhead and general administrative costs.

(2) A State may pay more than its required percentage share of the costs of a project under this chapter. When a State, or a person acting for a State, pays more than the State share of the costs of its projects during a fiscal year, the excess amount shall be applied to the State share for the costs of the State projects for later fiscal years.

(b) AGREEMENTS TO COMBINE AMOUNTS.—States may agree to combine any part of the amounts made available under this chapter to carry out a project that is eligible for assistance under this chapter when—

(1) the project will benefit each State making the agreement; and

(2) the agreement is not a violation of State law.

#### **§22106. Limitations on financial assistance**

(a) GRANTS AND LOANS.—A State shall use financial assistance for projects under this chapter to make a grant or lend money to the owner of rail property, or a rail carrier providing rail transportation, related to a

1 project being assisted. The State shall decide on the financial terms of the  
2 grant or loan, except that the time for making grant advances shall comply  
3 with regulations of the Secretary of the Treasury.

4 (b) HOLDING AND USE OF GOVERNMENT'S SHARE.—The State shall  
5 place the United States Government's share of money that is repaid in an  
6 interest-bearing account. However, the Secretary of Transportation may  
7 allow a borrower to place that money, for the benefit of the State, in a bank  
8 designated by the Secretary of the Treasury under section 10 of the Act  
9 of June 11, 1942 (12 U.S.C. 265). The State shall use the money and accu-  
10 mulated interest to make other grants and loans under this chapter.

11 (c) PAYMENT OF UNUSED MONEY AND ACCUMULATED INTEREST.—The  
12 State may pay the Secretary of Transportation the Government's share of  
13 unused money and accumulated interest at any time. However, the State  
14 must pay the unused money and accumulated interest to the Secretary when  
15 the State ends its participation under this chapter.

16 (d) ENCOURAGING PARTICIPATION.—To the maximum extent possible,  
17 the State shall encourage the participation of shippers, rail carriers, and  
18 local communities in paying the State share of assistance costs.

19 (e) RETENTION OF CONTINGENT INTEREST.—Each State shall retain a  
20 contingent interest (redeemable preference shares) for the Government's  
21 share of amounts in a rail line receiving assistance under this chapter. The  
22 State may collect its share of the amounts used for the rail line if—

23 (1) an application for abandonment of the rail line is filed under  
24 chapter 109 of this title; or

25 (2) the rail line is sold or disposed of after it has received assistance  
26 under this chapter.

## 27 **§22107. Records, audits, and information**

28 (a) RECORDS.—Each recipient of financial assistance through an arrange-  
29 ment under this chapter shall keep records required by the Secretary of  
30 Transportation. The records shall be kept for 3 years after a project is com-  
31 pleted and shall disclose—

32 (1) the amount of, and disposition by the recipient, of the assistance;

33 (2) the total costs of the project for which the assistance was given  
34 or used;

35 (3) the amount of that part of the costs of the project paid by other  
36 sources; and

37 (4) any other records that will make an effective audit easier.

38 (b) AUDITS.—The Secretary and the Comptroller General shall make reg-  
39 ular financial and performance audits, as provided under chapter 75 of title  
40 31, of activities and transactions assisted under this chapter.

(c) INFORMATION.—The Interstate Commerce Commission shall provide the Secretary with information the Secretary requests to assist in carrying out this chapter. The Commission shall provide the information not later than 30 days after receiving a request from the Secretary.

(d) LIST OF RAIL LINES.—Not later than August 1 of each year, each rail carrier subject to subchapter I of chapter 105 of this title shall submit to the Secretary a list of the rail lines of the carrier that carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

#### **§ 22108. Authorization of appropriations**

(a) GENERAL.—(1) Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter:

(A) \$25,000,000 for the fiscal year ending September 30, 1993.

(B) \$30,000,000 for the fiscal year ending September 30, 1994.

(2) Amounts appropriated under paragraph (1) of this subsection remain available until expended.

(3) No amount may be appropriated to the Secretary for any period after September 30, 1994, to carry out this chapter.

(b) DISTRIBUTION OF AMOUNTS.—The Secretary shall establish procedures necessary to ensure that amounts available to the Secretary for projects under this chapter are distributed not later than April 1 of the fiscal year for which the amounts are appropriated. If any amounts are not distributed by April 1, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of those amounts and the reasons for the delay in distribution.

(c) AVAILABILITY OF OTHER AMOUNTS.—Amounts appropriated to carry out section 5(i) of the Department of Transportation Act for fiscal year 1990 that are not applied for or that remain unobligated on January 1, 1991, are available to the Secretary for projects under this chapter.

### **PART C—PASSENGER TRANSPORTATION**

#### **CHAPTER 241—GENERAL**

Sec.

24101. Findings, purpose, and goals.

24102. Definitions.

24103. Enforcement.

24104. Authorization of appropriations.

#### **§ 24101. Findings, purpose, and goals**

(a) FINDINGS.—(1) Public convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States.

1 (2) Rail passenger transportation can help alleviate overcrowding of air-  
2 ways and airports and on highways.

3 (3) A traveler in the United States should have the greatest possible  
4 choice of transportation most convenient to the needs of the traveler.

5 (4) A greater degree of cooperation is necessary among Amtrak, other rail  
6 carriers, State, regional, and local governments, the private sector, labor or-  
7 ganizations, and suppliers of services and equipment to Amtrak to achieve  
8 a performance level sufficient to justify expending public money.

9 (5) Modern and efficient commuter rail passenger transportation is im-  
10 portant to the viability and well-being of major urban areas and to the en-  
11 ergy conservation and self-sufficiency goals of the United States.

12 (6) As a rail passenger transportation entity, Amtrak should be available  
13 to operate commuter rail passenger transportation through its subsidiary,  
14 Amtrak Commuter, under contract with commuter authorities that do not  
15 provide the transportation themselves as part of the governmental function  
16 of the State.

17 (7) The Northeast Corridor is a valuable resource of the United States  
18 used by intercity and commuter rail passenger transportation and freight  
19 transportation.

20 (8) Greater coordination between intercity and commuter rail passenger  
21 transportation is required.

22 (b) PURPOSE.—By using innovative operating and marketing concepts,  
23 Amtrak shall provide intercity and commuter rail passenger transportation  
24 that completely develops the potential of modern rail transportation to meet  
25 the intercity and commuter passenger transportation needs of the United  
26 States.

27 (c) GOALS.—Amtrak shall—

28 (1) use its best business judgment in acting to minimize United  
29 States Government subsidies, including—

30 (A) increasing fares;

31 (B) increasing revenue from the transportation of mail and ex-  
32 press;

33 (C) reducing losses on food service;

34 (D) improving its contracts with operating rail carriers;

35 (E) reducing management costs; and

36 (F) increasing employee productivity;

37 (2) minimize Government subsidies by encouraging State, regional,  
38 and local governments and the private sector to share the cost of pro-  
39 viding rail passenger transportation, including the cost of operating fa-  
40 cilities;

(3) carry out strategies to achieve immediately maximum productivity and efficiency consistent with safe and efficient transportation;

(4) operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables;

(5) develop transportation on rail corridors subsidized by States and private parties;

(6) implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort;

(7) encourage rail carriers to assist in improving intercity rail passenger transportation;

(8) improve generally the performance of Amtrak through comprehensive and systematic operational programs and employee incentives;

(9) carry out policies that ensure equitable access to the Northeast Corridor by intercity and commuter rail passenger transportation;

(10) coordinate the uses of the Northeast Corridor, particularly intercity and commuter rail passenger transportation; and

(11) maximize the use of its resources, including the most cost-effective use of employees, facilities, and real property.

(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection (c)(11) of this section, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies.

## **§ 24102. Definitions**

In this part—

(1) “auto-ferry transportation” means intercity rail passenger transportation—

(A) of automobiles or recreational vehicles and their occupants;

and

(B) when space is available, of used unoccupied vehicles.

(2) “avoidable loss” means the avoidable costs of providing rail passenger transportation, less revenue attributable to the transportation, as determined by the Interstate Commerce Commission under section 553 of title 5.

(3) “basic system” means the system of intercity rail passenger transportation designated by the Secretary of Transportation under section 4 of the Amtrak Improvement Act of 1978 and approved by Congress, and transportation required to be provided under section

24705(a) of this title and section 4(g) of the Act, including changes in the system or transportation that Amtrak makes using the route and service criteria.

(4) “commuter authority” means a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation.

(5) “commuter rail passenger transportation” means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

(6) “intercity rail passenger transportation” means rail passenger transportation, except commuter rail passenger transportation.

(7) “Northeast Corridor” means Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island.

(8) “rail carrier” means a person providing rail transportation for compensation.

(9) “rate” means a rate, fare, or charge for rail transportation.

(10) “regional transportation authority” means an entity established to provide passenger transportation in a region.

(11) “route and service criteria” means the criteria and procedures for making route and service decisions established under section 404(c)(1)–(3)(A) of the Rail Passenger Service Act.

#### **§ 24103. Enforcement**

(a) GENERAL.—(1) Except as provided in paragraph (2) of this subsection, only the Attorney General may bring a civil action for equitable relief in a district court of the United States when Amtrak or a rail carrier—

(A) engages in or adheres to an action, practice, or policy inconsistent with this part;

(B) obstructs or interferes with an activity authorized under this part;

(C) refuses, fails, or neglects to discharge its duties and responsibilities under this part; or

(D) threatens—

(i) to engage in or adhere to an action, practice, or policy inconsistent with this part;

(ii) to obstruct or interfere with an activity authorized by this part; or

(iii) to refuse, fail, or neglect to discharge its duties and responsibilities under this part.

(2) An employee affected by any conduct or threat referred to in paragraph (1) of this subsection, or an authorized employee representative, may bring the civil action if the conduct or threat involves a labor agreement.

(b) REVIEW OF DISCONTINUANCE OR REDUCTION.—A discontinuance of a route, a train, or transportation, or a reduction in the frequency of transportation, by Amtrak is reviewable only in a civil action for equitable relief brought by the Attorney General.

(c) VENUE.—Except as otherwise prohibited by law, a civil action under this section may be brought in the judicial district in which Amtrak or the rail carrier resides or is found.

#### **§ 24104. Authorization of appropriations**

(a) CAPITAL ACQUISITION AND CORRIDOR DEVELOPMENT.—(1) Not more than \$250,000,000 may be appropriated to the Secretary of Transportation for each of the fiscal years ending September 30, 1993, and September 30, 1994, for the benefit of Amtrak to make capital expenditures under chapters 243–247 of this title.

(2) In addition to amounts that may be appropriated under section 24909 of this title, not more than the following amounts may be appropriated to the Secretary for the benefit of Amtrak to make capital expenditures under chapter 249 of this title:

(A) \$220,000,000 for the fiscal year ending September 30, 1993.

(B) \$250,000,000 for the fiscal year ending September 30, 1994.

(3)(A) Not more than 15 percent of each of the amounts appropriated under paragraphs (1) and (2) of this subsection is available for transportation described in subparagraphs (B) and (C) of this paragraph.

(B) Amounts made available under subparagraph (A) of this paragraph shall be used to develop new intercity rail passenger transportation on corridors between cities undergoing significant population growth and in which the transportation reasonably can be expected to provide travel times comparable with other surface transportation modes. An amount may be expended for the transportation only if a State requests the transportation and the State and Amtrak agree that—

(i) Amtrak will pay at least 90 percent of the cost of acquiring rolling stock for the transportation; and

(ii) the State will pay at least 90 percent of the cost of improving the right of way, including track structure, signal systems, passenger station facilities, highway and pedestrian grade crossings, and other safety equipment and facilities.

(C) Amounts made available under subparagraph (A) of this paragraph shall be used to begin new long distance intercity rail passenger transpor-

1 tation. An amount may be expended for the transportation only if a State  
2 requests the transportation and the State and Amtrak agree that—

3 (i) Amtrak will pay at least 75 percent of the cost of acquiring roll-  
4 ing stock for the transportation; and

5 (ii) the State will pay at least 90 percent of the cost of improving  
6 the right of way, including track structure, signal systems, passenger  
7 station facilities, highway and pedestrian grade crossings, and other  
8 safety equipment and facilities.

9 (D) Section 24704 of this title appears to the operating expenses of  
10 transportation described in subparagraphs (B) and (C) of this paragraph.

11 (b) OPERATING EXPENSES.—(1) Not more than \$381,000,000 may be  
12 appropriated to the Secretary for each of the fiscal years ending September  
13 30, 1993, and September 30, 1994, for the benefit of Amtrak for operating  
14 expenses. Not more than 5 percent of the amounts appropriated for each  
15 fiscal year shall be used to pay operating expenses under section 24704 of  
16 this title for transportation in operation on September 30, 1992.

17 (2)(A) Not more than the following amounts may be appropriated to the  
18 Secretary for the benefit of Amtrak for operating losses under section  
19 24704 of this title for transportation beginning after September 30, 1992:

20 (i) \$7,500,000 for the fiscal year ending September 30, 1993.

21 (ii) \$9,500,000 for the fiscal year ending September 30, 1994.

22 (B) The expenditure by Amtrak of an amount appropriated under sub-  
23 paragraph (A) of this paragraph is deemed not to be an operating expense  
24 when calculating the revenue-to-operating expense ratio of Amtrak.

25 (c) MANDATORY PAYMENTS.—(1) Not more than \$150,000,000 for the  
26 fiscal year ending September 30, 1993, and amounts that may be necessary  
27 for the fiscal year ending September 30, 1994, may be appropriated to the  
28 Secretary to pay—

29 (A) tax liabilities under section 3221 of the Internal Revenue Code  
30 of 1986 (26 U.S.C. 3221) due in those fiscal years that are more than  
31 the amount needed for benefits for individuals who retire from Amtrak  
32 and for their beneficiaries;

33 (B) obligations of Amtrak under section 8(a) of the Railroad Unem-  
34 ployment Insurance Act (45 U.S.C. 358(a)) due in those fiscal years  
35 that are more than obligations of Amtrak calculated on an experience-  
36 related basis; and

37 (C) obligations of Amtrak due under section 3321 of the Code (26  
38 U.S.C. 3321).

39 (2) Amounts appropriated under this subsection are not a United States  
40 Government subsidy of Amtrak.



(d) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends. In each fiscal year in which amounts are authorized to be appropriated under this section, amounts appropriated shall be paid to Amtrak as follows:

(1) 50 percent on October 1.

(2) 25 percent on January 1.

(3) 25 percent on April 1.

(e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—(1) Amounts appropriated under this section remain available until expended.

(2) Amounts for capital acquisitions and improvements may be appropriated in a fiscal year before the fiscal year in which the amounts will be obligated.

(f) LIMITATIONS ON USE.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation.

## CHAPTER 243—AMTRAK

Sec.

24301. Status and applicable laws.

24302. Board of directors.

24303. Officers.

24304. Capitalization.

24305. General authority.

24306. Mail, express, and auto-ferry transportation.

24307. Special transportation.

24308. Use of facilities and providing services to Amtrak.

24309. Retaining and maintaining facilities.

24310. Assistance for upgrading facilities.

24311. Acquiring interests in property by eminent domain.

24312. Labor standards.

24313. Rail safety system program.

24314. Demonstration of new technology.

24315. Reports and audits.

### § 24301. Status and applicable laws

(a) STATUS.—Amtrak—

(1) is a rail carrier under section 10102 of this title;

(2) shall be operated and managed as a for-profit corporation; and

(3) is not a department, agency, or instrumentality of the United States Government.

(b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—The principal office and place of business of Amtrak are in the District of Columbia. Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process

1 by certified mail addressed to the secretary of Amtrak at its principal office  
 2 and place of business. Amtrak is a citizen only of the District of Columbia  
 3 when deciding original jurisdiction of the district courts of the United States  
 4 in a civil action.

5 (c) APPLICATION OF SUBTITLE IV.—(1) Subtitle IV of this title applies  
 6 to Amtrak, except for provisions related to the—

7 (A) regulation of rates;

8 (B) abandonment or extension of rail lines used only for passenger  
 9 transportation and the abandonment or extension of operations over  
 10 those lines;

11 (C) regulation of routes and service;

12 (D) discontinuance or change of rail passenger transportation oper-  
 13 ations; and

14 (E) issuance of securities or the assumption of an obligation or li-  
 15 ability related to the securities of others.

16 (2) Notwithstanding this subsection—

17 (A) sections 10721–10724 of this title apply to Amtrak; and

18 (B) on application of an adversely affected motor carrier, the Inter-  
 19 state Commerce Commission under any provision of subtitle IV of this  
 20 title applicable to a carrier subject to subchapter I of chapter 105 of  
 21 this title may hear a complaint about an unfair or predatory rate or  
 22 marketing practice of Amtrak for a route or service operating at a loss.

23 (d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND  
 24 REGULATIONS.—Laws and regulations governing safety, employee represen-  
 25 tation for collective bargaining purposes, the handling of disputes between  
 26 carriers and employees, employee retirement, annuity, and unemployment  
 27 systems, and other dealings with employees that apply to a common carrier  
 28 subject to subchapter I of chapter 105 of this title apply to Amtrak.

29 (e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title  
 30 5, this part, and, to the extent consistent with this part, the District of Co-  
 31 lumbia Business Corporation Act (D.C. Code §29–301 et seq.) apply to  
 32 Amtrak.

33 (f) LAWS GOVERNING LEASES AND CONTRACTS.—The laws of the Dis-  
 34 trict of Columbia govern leases and contracts of Amtrak, regardless of  
 35 where they are executed.

36 (g) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State  
 37 or other law related to rates, routes, or service does not apply to Amtrak  
 38 in connection with rail passenger transportation.

39 (h) NONAPPLICATION OF PAY PERIOD LAWS.—A State or local law relat-  
 40 ed to pay periods or days for payment of employees does not apply to Am-  
 41 trak. Except when otherwise provided under a collective bargaining agree-

1 ment, an employee of Amtrak shall be paid at least as frequently as the  
2 employee was paid on October 1, 1979.

3 (i) PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A  
4 State may not adopt or continue in force a law, rule, regulation, order, or  
5 standard requiring Amtrak to employ a specified number of individuals to  
6 perform a particular task, function, or operation.

7 (j) NONAPPLICATION OF LAWS ON JOINT USE OR OPERATION OF FACILI-  
8 TIES AND EQUIPMENT.—Prohibitions of law applicable to an agreement for  
9 the joint use or operation of facilities and equipment necessary to provide  
10 quick and efficient rail passenger transportation do not apply to a person  
11 making an agreement with Amtrak to the extent necessary to allow the per-  
12 son to make and carry out obligations under the agreement.

13 (k) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection—

14 (A) “additional tax” means a tax or fee—

15 (i) on the acquisition, improvement, ownership, or operation of  
16 personal property by Amtrak; and

17 (ii) on real property, except a tax or fee on the acquisition of  
18 real property or on the value of real property not attributable to  
19 improvements made, or the operation of those improvements, by  
20 Amtrak.

21 (B) “Amtrak” includes a rail carrier subsidiary of Amtrak and a les-  
22 sor or lessee of Amtrak or one of its rail carrier subsidiaries.

23 (2) Amtrak is not required to pay an additional tax because of an expend-  
24 iture to acquire or improve real property, equipment, a facility, or right-of-  
25 way material or structures used in providing rail passenger transportation,  
26 even if that use is indirect.

27 (l) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—

28 (1) Amtrak or a rail carrier subsidiary of Amtrak is exempt from a tax or  
29 fee imposed by a State, a political subdivision of a State, or a local taxing  
30 authority and levied on it after September 30, 1981. However, Amtrak is  
31 not exempt under this subsection from a tax or fee that it was required to  
32 pay as of September 10, 1982.

33 (2) The district courts of the United States have original jurisdiction over  
34 a civil action Amtrak brings to enforce this subsection and may grant equi-  
35 table or declaratory relief requested by Amtrak.

36 (m) WASTE DISPOSAL.—(1) An intercity rail passenger car manufactured  
37 after October 14, 1990, shall be built to provide for the discharge of human  
38 waste only at a servicing facility. Amtrak shall retrofit each of its intercity  
39 rail passenger cars that was manufactured after May 1, 1971, and before  
40 October 15, 1990, with a human waste disposal system that provides for

1 the discharge of human waste only at a servicing facility. Subject to appro-  
 2 priations—

3 (A) the retrofit program shall be completed not later than October  
 4 15, 1996; and

5 (B) a car that does not provide for the discharge of human waste  
 6 only at a servicing facility shall be removed from service after that  
 7 date.

8 (2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and  
 9 other laws of the United States, States, and local governments do not apply  
 10 to waste disposal from rail carrier vehicles operated in intercity rail pas-  
 11 senger transportation. The district courts of the United States have original  
 12 jurisdiction over a civil action Amtrak brings to enforce this paragraph and  
 13 may grant equitable or declaratory relief requested by Amtrak.

14 (n) RAIL TRANSPORTATION TREATED EQUALLY.—When authorizing  
 15 transportation in the continental United States for an officer, employee, or  
 16 member of the uniformed services of a department, agency, or instrumentality  
 17 of the Government, the head of that department, agency, or instrumen-  
 18 tality shall consider rail transportation (including transportation by extra-  
 19 fare trains) the same as transportation by another authorized mode. The  
 20 Administrator of General Services shall include Amtrak in the contract air  
 21 program of the Administrator in markets in which transportation provided  
 22 by Amtrak is competitive with other carriers on fares and total trip times.

23 **§ 24302. Board of directors**

24 (a) COMPOSITION AND TERMS.—(1) The board of directors of Amtrak is  
 25 composed of the following 9 directors, each of whom must be a citizen of  
 26 the United States:

27 (A) the Secretary of Transportation.

28 (B) the President of Amtrak.

29 (C) 3 individuals appointed by the President of the United States,  
 30 by and with the advice and consent of the Senate, as follows:

31 (i) one individual selected from a list of 3 qualified individuals  
 32 submitted by the Railway Labor Executives Association.

33 (ii) one chief executive officer of a State selected from among  
 34 the chief executive officers of States with an interest in rail trans-  
 35 portation. The chief executive officer may select an individual to  
 36 act as the officer's representative at board meetings.

37 (iii) one individual selected as a representative of business with  
 38 an interest in rail transportation.

39 (D) 2 individuals selected by the President of the United States from  
 40 a list of names consisting of one individual nominated by each com-  
 41 muter authority for which Amtrak Commuter provides commuter rail

passenger transportation under section 24505 of this title and one individual nominated by each commuter authority in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) that provides its own commuter rail passenger transportation or makes a contract with an operator (except Amtrak Commuter), except that—

(i) one of the individuals selected must have been nominated by a commuter authority for which Amtrak Commuter provides commuter rail transportation; or

(ii) if Amtrak Commuter does not provide commuter rail passenger transportation for any authority, the 2 individuals shall be selected from a list of 5 individuals submitted by commuter authorities providing transportation over rail property of Amtrak.

(E) 2 individuals selected by the holders of the preferred stock of Amtrak.

(2) An individual appointed under paragraph (1)(C) of this subsection serves for 4 years or until the individual's successor is appointed and qualified. Not more than 2 individuals appointed under paragraph (1)(C) may be members of the same political party.

(3) An individual selected under paragraph (1)(D) of this subsection serves for 2 years or until the individual's successor is selected.

(4) An individual selected under paragraph (1)(E) of this subsection serves for one year or until the individual's successor is selected.

(5) The President of Amtrak serves as Chairman of the board.

(6) The Secretary may be represented at a meeting of the board only by the Deputy Secretary of Transportation, the Administrator of the Federal Railroad Administration, or the General Counsel of the Department of Transportation.

(b) CUMULATIVE VOTING.—The articles of incorporation of Amtrak shall provide for cumulative voting for all stockholders.

(c) CONFLICTS OF INTEREST.—When serving on the board, a director appointed by the President of the United States may not have—

(1) a financial or employment relationship with a rail carrier; and

(2) a significant financial relationship or an employment relationship with a person competing with Amtrak in providing passenger transportation.

(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to \$300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.

### **§ 24303. Officers**

(a) APPOINTMENT AND TERMS.—Amtrak has a President and other officers that are named and appointed by the board of directors of Amtrak. An officer of Amtrak must be a citizen of the United States. Officers of Amtrak serve at the pleasure of the board.

(b) PAY.—The board may fix the pay of the officers of Amtrak. An officer may not be paid more than the general level of pay for officers of rail carriers with comparable responsibility.

(c) CONFLICTS OF INTEREST.—When employed by Amtrak, an officer may not have a financial or employment relationship with another rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.

### **§ 24304. Capitalization**

(a) STOCK.—Amtrak may have outstanding one issue of common stock and one issue of preferred stock. Each type of stock is eligible for a dividend. The articles of incorporation of Amtrak shall provide that—

- (1) each type of stock must be fully paid and nonassessable;
- (2) common stock has a par value of \$10 a share; and
- (3) preferred stock has a par value of \$100 a share.

(b) LIMITATIONS ON OWNERSHIP AND VOTING.—(1) A rail carrier or person controlling a rail carrier—

(A) may not hold preferred stock of Amtrak; and

(B) may vote not more than one-third of the total number of shares of outstanding common stock of Amtrak.

(2) Additional common stock owned by a rail carrier or person controlling a rail carrier is deemed to be not outstanding for voting and quorum purposes.

(c) PREFERRED STOCK DIVIDENDS AND LIQUIDATION PREFERENCES.—The articles of incorporation of Amtrak shall provide that—

1 (1) its preferred stock has a cumulative dividend of at least 6 per-  
2 cent a year;

3 (2) if a dividend on the preferred stock is not declared and paid or  
4 set aside for payment, the deficiency shall be declared and paid or set  
5 aside for payment before a dividend or other distribution is made on  
6 its common stock;

7 (3) the preferred stock has a liquidation preference over the common  
8 stock entitling holders of preferred stock to receive a liquidation pay-  
9 ment of at least par value plus all accrued unpaid dividends before a  
10 liquidation payment is made to holders of common stock; and

11 (4) the preferred stock may be converted to common stock.

12 (d) ISSUANCE OF PREFERRED STOCK TO SECRETARY.—(1) Not later  
13 than 30 days after the close of each fiscal quarter, Amtrak shall issue to  
14 the Secretary of Transportation preferred stock equal, to the nearest whole  
15 share, to the amount paid to Amtrak under section 24104(d) of this title  
16 during the quarter.

17 (2) Preferred stock issued under this subsection or section 304(c)(1) of  
18 the Rail Passenger Service Act is deemed to be issued on the date Amtrak  
19 receives the amounts for which the stock is issued.

20 (3) An amendment to the articles of incorporation of Amtrak is not re-  
21 quired for issuing preferred stock under this subsection.

22 (e) TAXES AND FEES ON PREFERRED STOCK.—A tax or fee applies to  
23 preferred stock issued under this section only if specifically prescribed by  
24 Congress.

25 (f) NONVOTING CERTIFICATES OF INDEBTEDNESS.—Amtrak may issue  
26 nonvoting certificates of indebtedness, except that an obligation with a liq-  
27 uidation interest superior to preferred stock issued to the Secretary or se-  
28 cured by a lien on property of Amtrak may be incurred when preferred  
29 stock issued to the Secretary is outstanding only if the Secretary consents.

30 (g) INSPECTION RIGHTS.—Stockholders of Amtrak have the rights of in-  
31 specting and copying set forth in section 45(b) of the District of Columbia  
32 Business Corporation Act (D.C. Code § 29–345(b)) regardless of the  
33 amount of stock they hold.

#### 34 **§ 24305. General authority**

35 (a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—(1)  
36 Amtrak may acquire, operate, maintain, and make contracts for the oper-  
37 ation and maintenance of equipment and facilities necessary for intercity  
38 and commuter rail passenger transportation, the transportation of mail and  
39 express, and auto-ferry transportation.

40 (2) Amtrak shall operate and control directly, to the extent practicable,  
41 all aspects of the rail passenger transportation it provides.

(b) MAINTENANCE AND REHABILITATION.—Amtrak may maintain and rehabilitate rail passenger equipment and shall maintain a regional maintenance plan that includes—

(1) a review panel at the principal office of Amtrak consisting of members the President of Amtrak designates;

(2) a systemwide inventory of spare equipment parts in each operational region;

(3) enough maintenance employees for cars and locomotives in each region;

(4) a systematic preventive maintenance program;

(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and

(6) other elements or activities Amtrak considers appropriate.

(c) MISCELLANEOUS AUTHORITY.—Amtrak may—

(1) make and carry out appropriate agreements;

(2) transport mail and express and shall use all feasible methods to obtain the bulk mail business of the United States Postal Service;

(3) improve its reservation system and advertising;

(4) provide food and beverage services on its trains only if revenues from the services each year at least equal the cost of providing the services;

(5) conduct research, development, and demonstration programs related to the mission of Amtrak; and

(6) buy or lease rail rolling stock and develop and demonstrate improved rolling stock.

(d) THROUGH ROUTES AND JOINT FARES.—(1) Establishing through routes and joint fares between Amtrak and other intercity rail passenger carriers and motor carriers of passengers is consistent with the public interest and the transportation policy of the United States. Congress encourages establishing those routes and fares.

(2) Amtrak may establish through routes and joint fares with any domestic or international motor carrier, air carrier, or water carrier.

(e) RAIL POLICE.—Amtrak may employ rail police to provide security for rail passengers and property of Amtrak. Rail police employed by Amtrak who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position may be employed without regard to the law of another State containing those requirements.

(f) DOMESTIC BUYING PREFERENCES.—(1) In this subsection, “United States” means the States, territories, and possessions of the United States and the District of Columbia.

(2) Amtrak shall buy only—



(A) unmanufactured articles, material, and supplies mined or produced in the United States; or

(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

(3) Paragraph (2) of this subsection applies only when the cost of those articles, material, or supplies bought is at least \$1,000,000.

(4) On application of Amtrak, the Secretary of Transportation may exempt Amtrak from this subsection if the Secretary decides that—

(A) for particular articles, material, or supplies—

(i) the requirements of paragraph (2) of this subsection are inconsistent with the public interest;

(ii) the cost of imposing those requirements is unreasonable; or

(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or

(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

#### **§ 24306. Mail, express, and auto-ferry transportation**

(a) ACTIONS TO INCREASE REVENUES.—Amtrak shall take necessary action to increase its revenues from the transportation of mail and express. To increase its revenues, Amtrak may provide auto-ferry transportation as part of the basic passenger transportation authorized by this part. When requested by Amtrak, a department, agency, or instrumentality of the United States Government shall assist in carrying out this section.

(b) AUTHORITY OF OTHERS TO PROVIDE AUTO-FERRY TRANSPORTATION.—(1) A person primarily providing auto-ferry transportation and any other person not a rail carrier may provide auto-ferry transportation over any route under a certificate issued by the Interstate Commerce Commission if the Commission finds that the auto-ferry transportation—

(A) will not impair the ability of Amtrak to reduce its losses or increase its revenues; and

(B) is required to meet the public demand.

(2) A rail carrier that has not made a contract with Amtrak to provide rail passenger transportation may provide auto-ferry transportation over its own rail lines.

(3) State and local laws and regulations that impair the provision of auto-ferry transportation do not apply to Amtrak or a rail carrier providing auto-ferry transportation. A rail carrier may not refuse to participate with Am-

1 trak in providing auto-ferry transportation because a State or local law or  
2 regulation makes the transportation unlawful.

3 **§ 24307. Special transportation**

4 (a) REDUCED FARE PROGRAM.—Amtrak shall maintain a reduced fare  
5 program for the following:

6 (1) individuals at least 65 years of age.

7 (2) individuals (except alcoholics and drug abusers) who—

8 (A) have a physical or mental impairment that substantially  
9 limits a major life activity of the individual;

10 (B) have a record of an impairment; or

11 (C) are regarded as having an impairment.

12 (b) ACTIONS TO ENSURE ACCESS.—Amtrak may act to ensure access to  
13 intercity transportation for elderly or handicapped individuals on passenger  
14 trains operated by or for Amtrak. That action may include—

15 (1) acquiring special equipment;

16 (2) conducting special training for employees;

17 (3) designing and acquiring new equipment and facilities;

18 (4) eliminating barriers in existing equipment and facilities to com-  
19 ply with the highest standards of design, construction, and alteration  
20 of property to accommodate elderly and handicapped individuals; and

21 (5) providing special assistance to elderly and handicapped individ-  
22 uals when getting on and off trains and in terminal areas.

23 (c) EMPLOYEE TRANSPORTATION.—(1) In this subsection, “rail carrier  
24 employee” means—

25 (A) an active full-time employee of a rail carrier or terminal com-  
26 pany and includes an employee on furlough or leave of absence;

27 (B) a retired employee of a rail carrier or terminal company; and

28 (C) a dependent of an employee referred to in clause (A) or (B) of  
29 this paragraph.

30 (2) Amtrak shall ensure that a rail carrier employee eligible for free or  
31 reduced-rate rail transportation on April 30, 1971, under an agreement in  
32 effect on that date is eligible, to the greatest extent practicable, for free or  
33 reduced-rate intercity rail passenger transportation provided by Amtrak  
34 under this part, if space is available, on terms similar to those available on  
35 that date under the agreement. However, Amtrak may apply to all rail car-  
36 rier employees eligible to receive free or reduced-rate transportation under  
37 any agreement a single systemwide schedule of terms that Amtrak decides  
38 applied to a majority of employees on that date under all those agreements.  
39 Unless Amtrak and a rail carrier make a different agreement, the carrier  
40 shall reimburse Amtrak at the rate of 25 percent of the systemwide average  
41 monthly yield of each revenue passenger-mile. The reimbursement is in

place of costs Amtrak incurs related to free or reduced-rate transportation, including liability related to travel of a rail carrier employee eligible for free or reduced-rate transportation.

(3) This subsection does not prohibit the Interstate Commerce Commission from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

**§ 24308. Use of facilities and providing services to Amtrak**

(a) GENERAL AUTHORITY.—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the Interstate Commerce Commission finds it necessary to carry out this part, the Commission shall—

(i) order that the facilities be made available and the services provided to Amtrak; and

(ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Commission shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The Commission shall decide the dispute not later than 90 days after Amtrak submits the dispute to the Commission.

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) OPERATING DURING EMERGENCIES.—To facilitate operation by Amtrak during an emergency, the Commission, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Commission then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail

line, junction, or crossing unless the Secretary of Transportation orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Secretary for relief. If the Secretary, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Secretary shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Secretary for an order requiring the carrier to allow the accelerated speeds. The Secretary shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Secretary shall establish the maximum allowable speeds of Amtrak trains on terms the Secretary decides are reasonable.

(e) ADDITIONAL TRAINS.—(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the Secretary may order the carrier, within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the Secretary decides not to hold a hearing, the Secretary, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Secretary shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the Commission shall decide the dispute under subsection (a) of this section.

#### **§ 24309. Retaining and maintaining facilities**

(a) DEFINITIONS.—In this section—

(1) “facility” means a rail line, right of way, fixed equipment, facility, or real property related to a rail line, right of way, fixed equipment, or facility, including a signal system, passenger station and repair tracks, a station building, a platform, and a related facility, including a water, fuel, steam, electric, and air line.

(2) downgrading a facility means reducing a track classification as specified in the Federal Railroad Administration track safety standards or altering a facility so that the time required for rail passenger transportation to be provided over the route on which a facility is located may be increased.

(b) APPROVAL REQUIRED FOR DOWNGRADING OR DISPOSAL.—A facility of a rail carrier or regional transportation authority that Amtrak used to provide rail passenger transportation on February 1, 1979, may be downgraded or disposed of only after approval by the Secretary of Transportation under this section.

(c) NOTIFICATION AND ANALYSIS.—(1) A rail carrier intending to downgrade or dispose of a facility Amtrak currently is not using to provide transportation shall notify Amtrak of its intention. If, not later than 60 days after Amtrak receives the notice, Amtrak and the carrier do not agree to retain or maintain the facility or to convey an interest in the facility to Amtrak, the carrier may apply to the Secretary for approval to downgrade or dispose of the facility.

(2) After a rail carrier notifies Amtrak of its intention to downgrade or dispose of a facility, Amtrak shall survey population centers with rail passenger transportation facilities to assist in preparing a valid and timely analysis of the need for the facility and shall update the survey as appropriate. Amtrak also shall maintain a system for collecting information gathered in the survey. The system shall collect the information based on geographic regions and on whether the facility would be part of a short haul or long haul route. The survey should facilitate an analysis of—

(A) ridership potential by ascertaining existing and changing travel patterns that would provide maximum efficient rail passenger transportation;

(B) the quality of transportation of competitors or likely competitors;

(C) the likelihood of Amtrak offering transportation at a competitive fare;

(D) opportunities to target advertising and fares to potential classes of riders;

(E) economic characteristics of rail passenger transportation related to the facility and the extent to which the characteristics are consistent

with sound economic principles of short haul or long haul rail transportation; and

(F) the feasibility of applying effective internal cost controls to the facility and route served by the facility to improve the ratio of passenger revenue to transportation expenses (excluding maintenance of tracks, structures, and equipment and depreciation).

(d) APPROVAL OF APPLICATION AND PAYMENT OF AVOIDABLE COSTS.—

(1) If Amtrak does not object to an application not later than 30 days after it is submitted, the Secretary shall approve the application promptly.

(2) If Amtrak objects to an application, the Secretary shall decide by not later than 180 days after the objection those costs the rail carrier may avoid if it does not have to retain or maintain a facility in the condition Amtrak requests. If Amtrak does not agree by not later than 60 days after the decision to pay the carrier these avoidable costs, the Secretary shall approve the application. When deciding whether to pay a carrier the avoidable costs of retaining or maintaining a facility, Amtrak shall consider—

(A) the potential importance of restoring rail passenger transportation on the route on which the facility is located;

(B) the market potential of the route;

(C) the availability, adequacy, and energy efficiency of an alternate rail line or alternate mode of transportation to provide passenger transportation to or near the places that would be served by the route;

(D) the extent to which major population centers would be served by the route;

(E) the extent to which providing transportation over the route would encourage the expansion of an intercity rail passenger system in the United States; and

(F) the possibility of increased ridership on a rail line that connects with the route.

(e) COMPLIANCE WITH OTHER OBLIGATIONS.—Downgrading or disposing of a facility under this section does not relieve a rail carrier from complying with its other common carrier or legal obligations related to the facility.

#### **§ 24310. Assistance for upgrading facilities**

(a) TO CORRECT DANGEROUS CONDITIONS.—(1) Amtrak or the owner of a facility presenting a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner for relocation or other measures undertaken after December 31, 1977, to minimize or eliminate the danger.

(2) The Secretary shall recommend to Congress that Congress authorize amounts for the relocation or other measures if the Secretary decides that—

1 (A) the facility presents a danger of death or serious injury to an  
2 employee or passenger or of serious damage to that property; and

3 (B) the owner should not be expected to bear the cost of that reloca-  
4 tion or other measures.

5 (b) TO CORRECT STATE AND LOCAL VIOLATIONS.—(1) Amtrak, by itself  
6 or jointly with an owner or operator of a rail station Amtrak uses to provide  
7 rail passenger transportation, may apply to the Secretary for amounts that  
8 may be appropriated under paragraph (2) of this subsection to pay or reim-  
9 burse expenses incurred after October 1, 1987, related to the station com-  
10 plying with an official notice received before October 1, 1987, from a State  
11 or local authority stating that the station violates or allegedly violates the  
12 building, construction, fire, electric, sanitation, mechanical, or plumbing  
13 code.

14 (2) Not more than \$1,000,000, may be appropriated to the Secretary to  
15 carry out paragraph (1) of this subsection. Amounts appropriated under  
16 this paragraph remain available until expended.

17 **§24311. Acquiring interests in property by eminent domain**

18 (a) GENERAL AUTHORITY.—(1) To the extent financial resources are  
19 available, Amtrak may acquire by eminent domain under subsection (b) of  
20 this section interests in property—

21 (A) necessary for intercity rail passenger transportation, except  
22 property of a rail carrier, a State, a political subdivision of a State,  
23 or a governmental authority; or

24 (B) requested by the Secretary of Transportation in carrying out the  
25 Secretary's duty to design and build an intermodal transportation ter-  
26 minal at Union Station in the District of Columbia if the Secretary  
27 assures Amtrak that the Secretary will reimburse Amtrak.

28 (2) Amtrak may exercise the power of eminent domain only if it cannot—

29 (A) acquire the interest in the property by contract; or

30 (B) agree with the owner on the purchase price for the interest.

31 (b) CIVIL ACTIONS.—(1) A civil action to acquire an interest in property  
32 by eminent domain under subsection (a) of this section must be brought in  
33 the district court of the United States for the judicial district in which the  
34 property is located or, if a single piece of property is located in more than  
35 one judicial district, in any judicial district in which any piece of the prop-  
36 erty is located. An interest is condemned and taken by Amtrak for its use  
37 when a declaration of taking is filed under this subsection and an amount  
38 of money estimated in the declaration to be just compensation for the inter-  
39 est is deposited in the court. The declaration may be filed with the com-  
40 plaint in the action or at any time before judgment. The declaration must  
41 contain or be accompanied by—

- (A) a statement of the public use for which the interest is taken;
- (B) a description of the property sufficient to identify it;
- (C) a statement of the interest in the property taken;
- (D) a plan showing the interest taken; and
- (E) a statement of the amount of money Amtrak estimates is just compensation for the interest.

(2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide—

(A) the time by which, and the terms under which, possession of the property is given to Amtrak; and

(B) the disposition of outstanding charges related to the property.

(3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6 percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.

(4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—

(1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the Interstate Commerce Commission for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the Commission, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the Commission decides that—

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

(2) If the amount of compensation is not determined by the date of the Commission's order, the order shall require, as part of the compensation,



1 interest at 6 percent a year from the date prescribed for the conveyance  
2 until the compensation is paid.

3 (3) Amtrak subsequently may reconvey to a third party an interest con-  
4 veyed to Amtrak under this subsection or prior comparable provision of law  
5 if the Commission decides that the reconveyance will carry out the purposes  
6 of this part, regardless of when the proceeding was brought (including a  
7 proceeding pending before a United States court on November 28, 1990).

#### 8 **§24312. Labor standards**

9 (a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—(1)  
10 Amtrak shall ensure that laborers and mechanics employed by contractors  
11 and subcontractors in construction work financed under an agreement made  
12 under section 24308(a), 24701(a), or 24704(b)(2) of this title will be paid  
13 wages not less than those prevailing on similar construction in the locality,  
14 as determined by the Secretary of Labor under the Act of March 3, 1931  
15 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). Amtrak may  
16 make such an agreement only after being assured that required labor stand-  
17 ards will be maintained on the construction work. Health and safety stand-  
18 ards prescribed by the Secretary under section 107 of the Contract Work  
19 Hours and Safety Standards Act (40 U.S.C. 333) apply to all construction  
20 work performed under such an agreement, except for construction work per-  
21 formed by a rail carrier.

22 (2) Wage rates in a collective bargaining agreement negotiated under the  
23 Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the  
24 Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—  
25 276a-5).

26 (b) CONTRACTING OUT.—(1) Amtrak may not contract out work nor-  
27 mally performed by an employee in a bargaining unit covered by a contract  
28 between a labor organization and Amtrak or a rail carrier that provided  
29 intercity rail passenger transportation on October 30, 1970, if contracting  
30 out results in the layoff of an employee in the bargaining unit.

31 (2) This subsection does not apply to food and beverage services provided  
32 on trains of Amtrak.

#### 33 **§24313. Rail safety system program**

34 In consultation with rail labor organizations, Amtrak shall maintain a rail  
35 safety system program for employees working on property owned by Am-  
36 trak. The program shall be a model for other rail carriers to use in develop-  
37 ing safety programs. The program shall include—

38 (1) periodic analyses of accident information, including primary and  
39 secondary causes;

40 (2) periodic evaluations of the activities of the program, particularly  
41 specific steps taken in response to an accident;

(3) periodic reports on amounts spent for occupational health and safety activities of the program;

(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;

(5) periodic reports on direct accident costs, including claims related to accidents; and

(6) reports and evaluations of other information Amtrak considers appropriate.

#### **§24314. Demonstration of new technology**

(a) **PLAN.**—Amtrak shall develop a plan for demonstrating new technology in rail passenger equipment. The plan shall provide that new equipment that Amtrak procures that may increase train speed significantly over existing rail facilities shall be demonstrated, to the extent practicable, throughout the intercity rail passenger system.

(b) **REPORT.**—Not later than September 30, 1993, Amtrak shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report summarizing the plan developed under subsection (a) of this section, including its goals, locations for technology demonstration, and a schedule for carrying out the plan.

(c) **COOPERATION.**—To make efforts to increase train speed throughout the intercity rail passenger system easier, Amtrak shall consult and cooperate, to the extent feasible, on request of eligible applicants proposing a technology demonstration authorized and financed under a law of the United States, with those applicants.

#### **§24315. Reports and audits**

(a) **AMTRAK ANNUAL OPERATIONS REPORT.**—Not later than February 15 of each year, Amtrak shall submit to Congress a report that—

(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—

(A) ridership;

(B) passenger-miles;

(C) the short-term avoidable profit or loss for each passenger-mile;

(D) the revenue-to-cost ratio;

(E) revenues;

(F) the United States Government subsidy;

(G) the subsidy not provided by the United States Government;

and

(H) on-time performance;

(2) provides relevant information about a decision to pay an officer of Amtrak more than the rate for level I of the Executive Schedule under section 5312 of title 5; and

(3) specifies—

(A) significant operational problems Amtrak identifies; and

(B) proposals by Amtrak to solve those problems.

(b) AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT.—(1) Not later than February 15 of each year, Amtrak shall submit to the President and Congress a complete report of its operations, activities, and accomplishments, including a statement of revenues and expenditures for the prior fiscal year. The report—

(A) shall include a discussion and accounting of Amtrak's success in meeting the goal of section 24902(b) of this title; and

(B) may include recommendations for legislation, including the amount of financial assistance needed for operations and capital improvements, the method of computing the assistance, and the sources of the assistance.

(2) Amtrak may submit reports to the President and Congress at other times Amtrak considers desirable.

(c) SECRETARY'S REPORT ON EFFECTIVENESS OF THIS PART.—The Secretary of Transportation shall prepare a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the United States. The report may include recommendations for legislation. The Secretary shall include this report as part of the annual report the Secretary submits under section 308(a) of this title.

(d) INDEPENDENT AUDITS.—An independent certified public accountant shall audit the financial statements of Amtrak each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be included in the report required by subsection (a) of this section.

(e) COMPTROLLER GENERAL AUDITS.—The Comptroller General may conduct performance audits of the activities and transactions of Amtrak. Each audit shall be conducted at the place at which the Comptroller General decides and under generally accepted management principles. The Comptroller General may prescribe regulations governing the audit.

(f) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CARRIERS.—Amtrak and, if required by the Comptroller General, a rail carrier with which Amtrak has made a contract for intercity rail passenger transportation shall make available for an audit under subsection (d) or (e) of this section all records and property of, or used by, Amtrak or the carrier that are necessary for the audit. Amtrak and the carrier shall provide facili-

ties for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Amtrak and the carrier may keep all reports and property.

(g) COMPTROLLER GENERAL'S REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on each audit, giving comments and information necessary to inform Congress on the financial operations and condition of Amtrak and recommendations related to those operations and conditions. The report also shall specify any financial transaction or undertaking the Comptroller General considers is carried out without authority of law. When the Comptroller General submits a report to Congress, the Comptroller General shall submit a copy of it to the President, the Secretary, and Amtrak at the same time.

## CHAPTER 245—AMTRAK COMMUTER

Sec.

24501. Status and applicable laws.

24502. Board of directors.

24503. Officers.

24504. General authority.

24505. Commuter rail passenger transportation.

24506. Certain duties and powers unaffected.

### § 24501. Status and applicable laws

(a) STATUS.—Amtrak Commuter—

(1) is a wholly-owned subsidiary of Amtrak;

(2) provides by contract commuter rail passenger transportation for a commuter authority with which Amtrak Commuter makes a contract to provide the transportation under this chapter;

(3) has no common carrier obligations to provide rail passenger or rail freight transportation; and

(4) is not a department, agency, or instrumentality of the United States Government.

(b) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Chapter 105 of this title does not apply to Amtrak Commuter. However, laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a rail carrier providing transportation subject to subchapter I of chapter 105 apply to Amtrak Commuter.

(c) APPLICATION OF CERTAIN ADDITIONAL LAWS.—This part and, to the extent consistent with this part, the District of Columbia Business Corporation Act (D.C. Code § 29–301 et seq.) apply to Amtrak Commuter.

(d) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State or other law related to rates, routes, or service in connection with rail passenger transportation does not apply to Amtrak Commuter.

(e) PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A State may not adopt or continue in force a law, rule, regulation, order, or standard requiring Amtrak Commuter to employ a specified number of individuals to perform a particular task, function, or operation.

(f) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection, “additional tax” means a tax or fee—

(A) on the acquisition, improvement, ownership, or operation of personal property by Amtrak Commuter; and

(B) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made, or the operation of those improvements, by Amtrak Commuter.

(2) Amtrak Commuter is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation.

(g) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority with which Amtrak Commuter could have made a contract to provide commuter rail passenger transportation under this chapter but which decided to provide its own rail passenger transportation beginning on January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

(h) NONAPPLICATION OF AGREEMENTS FOR FINANCIAL SUPPORT AND TRACKAGE RIGHTS.—An agreement under which financial support was provided on January 2, 1974, to a commuter authority to continue rail passenger transportation does not apply to Amtrak Commuter. However, Amtrak and the Consolidated Rail Corporation retain appropriate trackage rights over rail property owned or leased by the authority. Compensation for the rights shall be reasonable.

### **§24502. Board of directors**

(a) COMPOSITION.—The board of directors of Amtrak Commuter is composed of the following directors:

(1) the President of Amtrak Commuter.

(2) one individual from the board of directors of Amtrak selected as a representative of commuter authorities that make contracts with Amtrak Commuter for the operation of commuter rail passenger transportation.

(3) 2 individuals selected by the board of directors of Amtrak.

1 (4) 2 individuals selected by commuter authorities for which Amtrak  
 2 Commuter provides commuter rail transportation under this chapter.  
 3 However, only one individual shall be selected under this clause if Am-  
 4 trak Commuter provides the transportation for only one authority.

5 (b) TERMS.—Except as otherwise provided in this section, individuals  
 6 shall serve for 2 years.

7 (c) CHAIRMAN.—The board shall select annually one of its members to  
 8 serve as Chairman.

9 (d) PAY AND EXPENSES.—Each director not employed by the United  
 10 States Government is entitled to \$300 a day when performing board duties  
 11 and powers. Each director is entitled to reimbursement for necessary travel,  
 12 reasonable secretarial and professional staff support, and subsistence ex-  
 13 penses incurred in attending board meetings.

14 (e) VACANCIES.—A vacancy on the board is filled in the same way as the  
 15 original selection.

16 (f) BYLAWS.—The board may adopt and amend bylaws governing the op-  
 17 eration of Amtrak Commuter. The bylaws shall be consistent with this part  
 18 and the articles of incorporation.

#### 19 **§ 24503. Officers**

20 (a) APPOINTMENT AND TERMS.—Amtrak Commuter has a President and  
 21 other officers that are named and appointed by the board of directors of  
 22 Amtrak Commuter. An officer of Amtrak Commuter must be a citizen of  
 23 the United States. Officers of Amtrak Commuter serve at the pleasure of  
 24 the board.

25 (b) PAY.—The board may fix the pay of the officers of Amtrak Com-  
 26 muter. An officer may be paid not more than the general level of pay for  
 27 officers of rail carriers with comparable responsibility.

28 (c) CONFLICTS OF INTEREST.—When employed by Amtrak Commuter, an  
 29 officer may not have a financial or employment relationship with a rail car-  
 30 rier, except that holding securities issued by a rail carrier is not deemed  
 31 to be a violation of this subsection if the officer holding the securities makes  
 32 a complete public disclosure of the holdings and does not participate in any  
 33 decision directly affecting the rail carrier.

#### 34 **§ 24504. General authority**

35 (a) GENERAL.—Amtrak Commuter may—

36 (1) acquire, operate, maintain, and make contracts for the operation  
 37 of equipment and facilities necessary for commuter rail passenger  
 38 transportation;

39 (2) conduct research and development related to the mission of Am-  
 40 trak Commuter; and

41 (3) issue common stock to Amtrak.

(b) OPERATION AND CONTROL.—To the extent consistent with this part and with an agreement with a commuter authority, Amtrak Commuter shall operate and control all aspects of the commuter rail passenger transportation it provides.

(c) AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.—To the maximum extent practicable, Amtrak Commuter and Amtrak shall make an agreement that avoids duplicating employee functions and voluntarily establishes a consolidated work force.

**§24505. Commuter rail passenger transportation**

(a) GENERAL AUTHORITY.—Amtrak Commuter—

(1) shall provide commuter rail passenger transportation that the Consolidated Rail Corporation was obligated to provide on August 13, 1981, under section 303(b)(2) or 304(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

(2) may provide other commuter rail passenger transportation if the commuter authority for which the transportation will be provided offers to provide a commuter rail passenger transportation payment equal to the—

(A) avoidable costs of providing the transportation (including the avoidable cost of necessary capital improvements) and a reasonable return on the value; less

(B) revenue attributable to the transportation.

(b) OFFER REQUIREMENTS.—(1) A commuter authority making an offer under subsection (a)(2) of this section shall—

(A) show that it has obtained access to all rail property necessary to provide the additional commuter rail passenger transportation; and

(B) make the offer according to regulations the Rail Services Planning Office prescribes under section 10362(b)(5)(A) and (6) of this title.

(2) The Office may revise and update the regulations when necessary to carry out this section.

(c) ADDITIONAL EMPLOYEE REQUIREMENTS.—Additional employee requirements shall be met through existing seniority arrangements agreed to in the implementing agreement negotiated under section 508 of the Rail Passenger Service Act.

(d) WHEN OBLIGATION DOES NOT APPLY.—Amtrak Commuter is not obligated to provide commuter rail passenger transportation if a commuter authority provides the transportation or makes a contract under which a person, except Amtrak Commuter, will provide the transportation. When appropriate, Amtrak Commuter shall give the authority or person access to the rail property needed to provide the transportation.

(e) DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPORTATION.—(1) Amtrak Commuter may discontinue commuter rail passenger transportation provided under this section on 60 days' notice if—

(A) a commuter authority does not offer a commuter rail passenger transportation payment under subsection (a)(2) of this section; or

(B) a payment is not paid when due.

(2) The Office shall prescribe regulations on the necessary contents of the notice required under this subsection.

(f) COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.—Compensation by a commuter authority to Amtrak or Amtrak Commuter for right-of-way related costs for transportation over property Amtrak owns shall be determined under a method the Interstate Commerce Commission establishes under section 1163 of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1111) or to which the parties agree.

(g) APPLICATION OF OTHER LAWS.—All laws related to commuter rail passenger transportation apply to a commuter authority providing commuter rail passenger transportation under this section.

#### **§ 24506. Certain duties and powers unaffected**

This chapter does not affect a duty or power of the Consolidated Rail Corporation or its successor and any bi-state commuter authority under an agreement, lease, or contract under which property was conveyed to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

### **CHAPTER 247—AMTRAK ROUTE SYSTEM**

Sec.

24701. Operation of basic system.

24702. Improving rail passenger transportation.

24703. Route and service criteria.

24704. Transportation requested by States, authorities, and other persons.

24705. Additional qualifying routes.

24706. Discontinuance of transportation.

24707. Cost and performance review.

24708. Special commuter transportation.

24709. International transportation.

#### **§ 24701. Operation of basic system**

(a) BY AMTRAK.—Amtrak shall provide intercity rail passenger transportation within the basic system unless the transportation is provided by—

(1) a rail carrier with which Amtrak did not make a contract under section 401(a) of the Rail Passenger Service Act; or

(2) a regional transportation authority under contract with Amtrak.

(b) BY OTHERS WITH CONSENT OF AMTRAK.—Except as provided in section 24306 of this title, a person may provide intercity rail passenger transportation over a route over which Amtrak provides scheduled intercity



1 rail passenger transportation under a contract under section 401(a) of the  
2 Act only with the consent of Amtrak.

3 **§ 24702. Improving rail passenger transportation**

4 (a) PLAN TO IMPROVE TRANSPORTATION.—Amtrak shall continue to  
5 carry out its plan, submitted under section 305(f) of the Rail Passenger  
6 Service Act, to improve intercity rail passenger transportation provided in  
7 the basic system. The plan shall include—

8 (1) a zero-based assessment of all operating practices;

9 (2) changes to achieve the minimum use of employees consistent with  
10 safe operations and adequate transportation;

11 (3) a systematic program for achieving the greatest ratio of train  
12 size to passenger demand;

13 (4) a systematic program to reduce trip time in the basic system;

14 (5) establishing training programs to achieve on-time departures;

15 (6) establishing priorities for passenger trains over freight trains;

16 (7) adjusting the buying and pricing of food and beverages so that  
17 food and beverage services ultimately will be profitable;

18 (8) cooperative marketing opportunities between Amtrak and govern-  
19 mental authorities that have intercity rail passenger transportation;  
20 and

21 (9) cooperative marketing campaigns sponsored by Amtrak and the  
22 Secretary of Energy, the Administrator of the Federal Highway Ad-  
23 ministration, and the Administrator of the Environmental Protection  
24 Agency.

25 (b) STATE AND LOCAL SPEED RESTRICTIONS.—Amtrak shall—

26 (1) identify any speed restriction a State or local government im-  
27 poses on a train of Amtrak that Amtrak decides impedes Amtrak from  
28 achieving high-speed intercity rail passenger transportation; and

29 (2) consult with that State or local government—

30 (A) to evaluate alternatives to the speed restriction, considering  
31 the local safety hazard that is the basis for the restriction; and

32 (B) to consider modifying or eliminating the restriction to allow  
33 safe operation at higher speeds.

34 (c) HIGH-SPEED RAIL TRANSPORTATION DEVELOPMENT.—On reason-  
35 able request by a State, political subdivision of a State, regional partner-  
36 ship, private sector representative, or other qualified person, Amtrak shall  
37 consult and cooperate to the extent feasible with that person to assist the  
38 efforts of that person to achieve high-speed rail transportation through  
39 equipment upgrades, grade-crossing safety improvements, and incremental  
40 infrastructure improvements on existing rail facilities that Amtrak uses (ex-  
41 cept the Northeast Corridor facilities). Not later than September 30, 1993,

Amtrak shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on its efforts under this subsection.

(d) ROUTES CONNECTING CORRIDORS.—Amtrak shall begin or improve appropriate rail passenger transportation on a route between corridors that Amtrak decides is justified because it will increase ridership on trains of Amtrak on the route and in the connecting corridors.

**§ 24703. Route and service criteria**

(a) ROUTE DISCONTINUANCES AND ADDITIONS.—Except as provided in this part, route discontinuances and route additions shall comply with the route and service criteria.

(b) CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.—(1) Amtrak shall submit to Congress a draft of an amendment to the route and service criteria when Amtrak decides an amendment is appropriate. The amendment is effective at the end of the first period of 120 calendar days of continuous session of Congress after it is submitted unless there is enacted into law during the period a joint resolution stating Congress does not approve the amendment.

(2) In this subsection—

(A) a continuous session of Congress is broken only by an adjournment sine die; and

(B) the 120-day period does not include days on which either House is not in session because of adjournment of more than 3 days to a day certain.

(c) NONAPPLICATION.—The route and service criteria do not apply to—

(1) increasing or, because of construction schedules or other temporary disruptive facts or seasonal fluctuations in ridership, decreasing the number of trains on an existing route or a part of an existing route or on a route on which additional trains are being tested;

(2) carrying out the recommendations developed under section 4 of the Amtrak Improvement Act of 1978;

(3) rerouting transportation between major population centers on an existing route; or

(4)(A) modifying transportation operations under section 24707(a) of this title; and

(B) modifying the route system or discontinuing transportation under section 24707(b) of this title.

**§ 24704. Transportation requested by States, authorities, and other persons**

(a) APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State, a regional or local authority, or another person may apply to Amtrak and

request Amtrak to provide rail passenger transportation or keep any part of a route, a train, or transportation that Amtrak intends to discontinue under section 24706(a) or (b) or 24707(a) or (b) of this title. An application shall—

(A) assure Amtrak that the State, authority, or person has sufficient resources to meet its share of the cost of the transportation for the time the transportation will be provided;

(B) contain a market analysis acceptable to Amtrak to ensure that there is adequate demand for the transportation; and

(C) commit the State, authority, or person to provide at least 45 percent of the short term avoidable loss of providing the transportation the first year the transportation is provided and at least 65 percent of the short term avoidable loss each of the following years, and, except as provided in section 24104(a) of this title, at least 50 percent of associated capital costs each year the transportation is provided.

(2) An application submitted by more than one State shall be considered in the same way as an application submitted by one State, without it being necessary for each State to comply with paragraph (1) of this subsection.

(b) ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each application submitted under subsection (a) of this section to decide whether—

(A) the application complies with subsection (a); and

(B) there is a reasonable probability that Amtrak can provide the transportation from available resources.

(2) Amtrak may make an agreement with an applicant under this section to begin or keep the transportation if Amtrak decides that the transportation can be provided with resources available to Amtrak. An agreement may be renewed for additional periods of not more than 2 years each.

(c) SELECTING AMONG COMPETING APPLICATIONS.—If more than one application is made for transportation consistent with the requirements of subsection (a) of this section, but all the transportation applied for cannot be provided with the available resources of Amtrak, the board of directors of Amtrak shall select the transportation that best serves the public interest and can be provided with the available resources of Amtrak.

(d) FARE INCREASES.—(1) Before increasing a fare applicable to transportation provided under subsection (b)(2) of this section by more than 5 percent during a 6-month period, Amtrak shall consult with officials of each State affected by the increase and explain why the increase is necessary.

(2) Except as provided in paragraph (3) of this subsection, a fare increase described in paragraph (1) of this subsection takes effect 90 days after Amtrak first consults with the affected States. However, not later than 30 days after the first consultation, a State may submit proposals to Am-

trak for reducing costs and increasing revenues of the transportation. Amtrak shall consider the proposals in deciding how much of the proposed increase shall go into effect.

(3)(A) Amtrak may increase a fare without regard to the restrictions of this subsection during—

(i) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; or

(ii) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(B) Amtrak shall notify each affected State of an increase under subparagraph (A) of this paragraph as soon as possible after Amtrak decides to increase a fare.

(e) DETERMINING LOSS, COSTS, AND REVENUES.—After consulting with officials of each State contributing to providing transportation under subsection (b)(2) of this section, the board shall establish the basis for determining short term avoidable loss and associated capital costs of, and revenues from, the transportation. Amtrak shall give State officials the basis for determining the loss, cost, and revenue for each route on which transportation is provided under subsection (b)(2).

(f) AVAILABILITY OF AMOUNTS.—Amounts provided by Amtrak under an agreement with an applicant under subsection (b)(2) of this section that are allocated for associated capital costs remain available until expended.

(g) ADVERTISING AND PROMOTION.—At least 2 percent but not more than 5 percent of the revenue generated by transportation provided under subsection (b)(2) of this section shall be used for advertising and promotion at the local level.

## **§ 24705. Additional qualifying routes**

(a) ROUTES RECOMMENDED FOR DISCONTINUANCE.—(1) To maintain a national intercity rail passenger system in the United States and if a reduction in operating expenses can be achieved, Amtrak shall provide rail passenger transportation over each route the Secretary of Transportation recommended be discontinued under section 4 of the Amtrak Improvement Act of 1978 and may restructure a route to serve a major population center as an ending place or principal intermediate place. Transportation over a long distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger mile on the route was not more than 7 cents. Transportation over a short distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger mile on the route was not more than 9 cents.

(2) For all routes, Amtrak shall calculate short term avoidable loss for each passenger-mile based on consistently defined factors. Calculations shall be based on the most recent available statistics for a 90-day period, except that Amtrak may use historical information adjusted to reflect the most recent available statistics.

(b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide equivalent or improved transportation consistent with the goals of section 4(a) of the Act, Amtrak may defer carrying out a recommendation of the Secretary under section 4 of the Act that requires providing transportation over a rail line not used in intercity rail passenger transportation on May 24, 1979, requires using a new facility, or requires making a new labor agreement, until any necessary capital improvements are made in the line or facility or the agreement is made.

(2) Notwithstanding another law and the route and service criteria, during the period a decision of the Secretary under section 4 of the Act is deferred, Amtrak shall provide substitute transportation over existing routes recommended for restructuring and over other existing feasible routes. Except for transportation concentrating on commuter ridership over a short haul route, transportation provided under this paragraph may be provided only if the route complies with subsection (a) of this section, adjusted to reflect constant 1979 dollars.

(c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part, Amtrak may provide short haul trains on additional routes totaling not more than 200 miles that link at least 2 major metropolitan areas—

(1) on a demonstration basis to establish the feasibility and benefits of the transportation; and

(2) to the extent available resources allow.

(d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake to provide rail passenger transportation between places served by a rail carrier filing a notice of discontinuance under section 10908 or 10909 of this title.

## **§ 24706. Discontinuance of transportation**

(a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least 90 days before transportation is discontinued under section 24704(b) or 24707(a) or (b) of this title, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share the cost of any part of the train, route, or transportation to be discontinued.

(2) Notice of the discontinuance of transportation under section 24704(b) or 24707(a) or (b) of this title shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue transportation under section 24704(b) or 24707(a) or (b) of this title during—

(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(2) Amtrak shall notify each affected State or regional or local transportation authority of a discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the transportation.

(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of its employees affected by a discontinuance of intercity rail passenger service, including a discontinuance of service provided by a rail carrier under a facility or service agreement under section 24308(a) of this title under a modification or ending of the agreement or because Amtrak begins providing that service. Arrangements shall include—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of employees against a worsening of their positions related to employment;

(D) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(E) paid training and retraining programs.

(2) With respect to Amtrak's obligations under this subsection and in an agreement to carry out this subsection involving only Amtrak and its employees, a discontinuance of intercity rail passenger service does not include an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of service, unless the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

(4) A contract under this chapter or section 24308(a) of this title shall specify the terms of protective arrangements.

(5) This subsection does not impose on Amtrak an obligation of a rail carrier related to a right, privilege, or benefit earned by an employee because of previous service performed for the carrier.

(6) This subsection does not apply to Amtrak Commuter.

**§ 24707. Cost and performance review**

(a) ROUTE REVIEWS.—Amtrak shall review annually each route in the basic system to decide if the route meets the long distance or short distance route criterion, as appropriate, under section 24705(a)(1) of this title, adjusted to reflect constant 1979 dollars. The review shall include an evaluation of the potential market demand for, and the cost of providing transportation on, a part of the route and an alternative route. Amtrak shall submit the results of the review to the House of Representatives, the Senate, and the Secretary of Transportation. If Amtrak decides that a route will not meet the criterion under section 24705(a)(1), as adjusted, Amtrak shall modify or discontinue rail passenger transportation operations on the route so that it will meet the criterion.

(b) FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.—Not later than 30 days after the beginning of each fiscal year, Amtrak shall evaluate the financial requirements for operating the basic system and the progress in achieving the system-wide performance standards prescribed under this part during the fiscal year. If Amtrak decides amounts available for the fiscal year are not enough to meet estimated operating costs, or if Amtrak estimates it cannot meet the performance standards, Amtrak shall act to reduce costs and improve performance. Action under this subsection shall be designed to continue the maximum level of transportation practicable, including—

(1) changing the frequency of transportation;

(2) increasing fares;

(3) reducing the cost of sleeper car and dining car service on certain routes;

(4) increasing the passenger capacity of cars used on certain routes; and

(5) modifying the route system or discontinuing transportation over routes, considering short term avoidable loss and the number of passengers served on those routes.

(c) COST LIMITATIONS AND REVENUE GOALS.—Annual costs of Amtrak may not be more than amounts, including grants made under section 24104 of this title, contributions of States, regional and local authorities, and other persons, and revenues, available to Amtrak in the fiscal year. Amtrak annu-

ally shall set a goal of recovering an amount so that its revenues, including contributions, is at least 61 percent of its costs, except capital costs.

(d) CONDUCTOR REPORTS.—To assess the operational performance of trains, the President of Amtrak may direct the conductor on any train of Amtrak to report to Amtrak any inadequacy of train operation. The report shall be signed by the conductor, contain sufficient information to locate equipment or personnel failures, and be submitted promptly to Amtrak.

#### **§ 24708. Special commuter transportation**

(a) Amtrak shall continue to provide rail passenger transportation provided under section 403(d) of the Rail Passenger Service Act before October 1, 1981, if, after considering estimated fare increases and State and local contributions to the transportation, the transportation meets the short distance route criterion under section 24705(a)(1) of this title, as adjusted. Transportation continued under this section shall be financed consistent with the method of financing in effect on September 30, 1981. If the transportation is not estimated to meet the criterion, as adjusted, Amtrak may modify or discontinue the transportation so that the criterion is met.

(b) TRANSPORTATION WITH SHORT-TERM AVOIDABLE LOSS.—Notwithstanding subsection (a) of this section, if after September 30, 1993, and before October 1, 1995, transportation provided under subsection (a) on a route during the prior 6 months has a short-term avoidable loss (excluding the cost of providing passenger equipment needed to provide the transportation), Amtrak may choose to consider modifying or discontinuing the transportation. If Amtrak does make such a choice, Amtrak shall solicit public comment for at least 30 days on alternatives to the modification or discontinuance. Not later than 60 days after the comment period ends, Amtrak may modify or discontinue the transportation so that there is no short-term avoidable loss under this section for providing the transportation on the route.

#### **§ 24709. International transportation**

Amtrak may develop and operate international intercity rail passenger transportation between the United States and Canada and between the United States and Mexico. The Secretary of the Treasury and the Attorney General, in cooperation with Amtrak, shall maintain, consistent with the effective enforcement of the immigration and customs laws, en route customs inspection and immigration procedures for international intercity rail passenger transportation that will—

(1) be convenient for passengers; and

(2) result in the quickest possible international intercity rail passenger transportation.



## CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Sec.

- 24901. Definitions.
- 24902. Goals and requirements.
- 24903. Program master plan for Boston-New York main line.
- 24904. General authority.
- 24905. Coordination board and safety committee.
- 24906. Eliminating highway at-grade crossings.
- 24907. Note and mortgage.
- 24908. Transfer taxes and levies and recording charges.
- 24909. Authorization of appropriations.

### § 24901. Definitions

In this chapter—

- (1) “final system plan” means the final system plan (including additions) adopted by the United States Railway Association under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).
- (2) “rail carrier” means an express carrier and a rail carrier as defined in section 10102 of this title, including Amtrak.

### § 24902. Goals and requirements

(a) NORTHEAST CORRIDOR IMPROVEMENT PLAN.—To the extent of amounts appropriated under section 24909 of this title, Amtrak shall carry out a Northeast Corridor improvement program to achieve the following goals:

- (1) establish not later than September 30, 1985, regularly scheduled and dependable intercity rail passenger transportation between—

- (A) Boston, Massachusetts, and New York, New York, in not more than 3 hours and 40 minutes, including intermediate stops; and

- (B) New York, New York, and the District of Columbia, in not more than 2 hours and 40 minutes, including intermediate stops;

- (2) improve facilities, under route criteria approved by Congress, on routes to Harrisburg, Pennsylvania, Albany, New York, and Atlantic City, New Jersey, from the Northeast Corridor main line, and to Boston, Massachusetts, and New Haven, Connecticut, from Springfield, Massachusetts, to make those facilities more compatible with improved high-speed transportation provided on the Northeast Corridor main line;

- (3) improve nonoperational parts of stations, related facilities, and fencing used in intercity rail passenger transportation;

- (4) facilitate improvements in, and usage of, commuter rail passenger, rail rapid transit, and local public transportation, to the extent compatible with clauses (1)–(3) of this subsection and subsections (f) and (h) of this section;

(5) maintain and improve rail freight transportation in or adjacent to the Northeast Corridor and through-freight transportation in the Northeast Corridor, to the extent compatible with clauses (1)–(4) of this subsection and subsections (f) and (h) of this section;

(6) continue and improve passenger radio mobile telephone service on high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, to the extent compatible with clauses (1)–(3) of this subsection and subsections (f) and (h) of this section; and

(7) eliminate to the maximum extent practicable congestion in rail freight and rail passenger transportation at the Baltimore and Potomac Tunnel in Baltimore, Maryland, by rehabilitating and improving the tunnel and the rail lines approaching the tunnel.

(b) MANAGING COSTS AND REVENUES.—Amtrak shall manage its operating costs, pricing policies, and other factors with the goal of having revenues derived each fiscal year from providing intercity rail passenger transportation over the Northeast Corridor route between the District of Columbia and Boston, Massachusetts, equal at least the operating costs of providing that transportation in that fiscal year.

(c) COST SHARING FOR NONOPERATIONAL FACILITIES.—(1) Fifty percent of the cost of improvements under subsection (a)(3) of this section shall be paid by a State, local or regional transportation authority or other responsible party. However, Amtrak may finance entirely a safety-related improvement.

(2) When a part of the cost of improvements under subsection (a)(3) of this section will be paid by a responsible party under paragraph (1) of this subsection, Amtrak may make an agreement with the party under which Amtrak—

(A) shall carry out the improvements with amounts appropriated under section 24909 of this title and the party shall reimburse Amtrak; and

(B) to the extent provided in an appropriation law, may incur obligations for contracts to carry out the improvements in anticipation of reimbursement.

(3) Amounts reimbursed to Amtrak under paragraph (2) of this subsection shall be credited to the appropriation originally charged for the cost of the improvements and are available for further obligation.

(d) PASSENGER RADIO MOBILE TELEPHONE SERVICE.—The President and departments, agencies, and instrumentalities of the United States Government shall assist Amtrak under subsection (a)(6) of this section, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and radio serv-

ices standards, when the Federal Communications Commission decides the assistance is in the public interest, convenience, and necessity.

(e) PRIORITIES IN SELECTING AND SCHEDULING PROJECTS.—When selecting and scheduling specific projects, Amtrak shall apply the following considerations, in the following order of priority:

(1) Safety-related items should be completed before other items because the safety of the passengers and users of the Northeast Corridor is paramount.

(2) Activities that benefit the greatest number of passengers should be completed before activities involving fewer passengers.

(3) Reliability of intercity rail passenger transportation must be emphasized.

(4) Trip-time requirements of this section must be achieved to the extent compatible with the priorities referred to in paragraphs (1)–(3) of this subsection.

(5) Improvements that will pay for the investment by achieving lower operating or maintenance costs should be carried out before other improvements.

(6) Construction operations should be scheduled so that the fewest possible passengers are inconvenienced, transportation is maintained, and the on-time performance of Northeast Corridor commuter rail passenger and rail freight transportation is optimized.

(7) Planning should focus on completing activities that will provide immediate benefits to users of the Northeast Corridor.

(f) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(g) AUTOMATIC TRAIN CONTROL SYSTEMS.—A train operating on the Northeast Corridor main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.

(h) HIGH-SPEED TRANSPORTATION.—If practicable, Amtrak shall establish intercity rail passenger transportation in the Northeast Corridor that carries out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121).

(i) EQUIPMENT DEVELOPMENT.—Amtrak shall develop economical and reliable equipment compatible with track, operating, and marketing characteristics of the Northeast Corridor, including the capability to meet reliable trip times under section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121) in regularly

1 scheduled revenue transportation in the Corridor, when the Northeast Cor-  
 2 ridor improvement program is completed. Amtrak must decide that equip-  
 3 ment complies with this subsection before buying equipment with financial  
 4 assistance of the Government. Amtrak shall submit a request for an author-  
 5 ization of appropriations for production of the equipment.

6 (j) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT  
 7 TRANSPORTATION.—(1) Amtrak may make an agreement with a rail freight  
 8 carrier or a regional transportation authority under which the carrier will  
 9 carry out an alternate off-corridor routing of rail freight transportation over  
 10 rail lines in the Northeast Corridor between the District of Columbia and  
 11 New York metropolitan areas, including intermediate points. The agreement  
 12 shall be for at least 5 years.

13 (2) Amtrak shall apply to the Interstate Commerce Commission for ap-  
 14 proval of the agreement and all related agreements accompanying the appli-  
 15 cation as soon as the agreement is made. If the Commission finds that ap-  
 16 proval is necessary to carry out this chapter, the Commission shall approve  
 17 the application and related agreements not later than 90 days after receiv-  
 18 ing the application.

19 (3) If an agreement is not made under paragraph (1) of this subsection,  
 20 Amtrak, with the consent of the other parties, may apply to the Interstate  
 21 Commerce Commission. Not later than 90 days after the application, the  
 22 Commission shall decide on the terms of an agreement if it decides that  
 23 doing so is necessary to carry out this chapter. The decision of the Commis-  
 24 sion is binding on the other parties.

25 (k) COORDINATION.—(1) The Secretary of Transportation shall coordi-  
 26 nate—

27 (A) transportation programs related to the Northeast Corridor to en-  
 28 sure that the programs are integrated and consistent with the North-  
 29 east Corridor improvement program; and

30 (B) amounts from departments, agencies, and instrumentalities of  
 31 the Government to achieve urban redevelopment and revitalization in  
 32 the vicinity of urban rail stations in the Northeast Corridor served by  
 33 intercity and commuter rail passenger transportation.

34 (2) If the Secretary finds significant noncompliance with this section, the  
 35 Secretary may deny financing to a noncomplying program until the non-  
 36 compliance is corrected.

37 (l) COMPLETION.—Amtrak shall give the highest priority to completing  
 38 the program.

**§ 24903. Program master plan for Boston-New York main line**

(a) CONTENTS.—Not later than October 27, 1993, in consultation with Amtrak and the commuter and freight rail carriers operating over the Northeast Corridor main line between Boston, Massachusetts, and New York, New York, the Secretary of Transportation shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a program master plan for a coordinated program of improvements to that main line that will allow the establishment of regularly scheduled, safe, and dependable rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops. The plan shall include—

(1) a description of the implications of the improvements for the regional transportation system, including the probable effects on general travel trends and on travel volumes in other transportation modes and the implications for State and local governments in achieving compliance with the Clean Air Act (42 U.S.C. 7401 et seq.);

(2) an identification of the coordinated program of improvements and the specific projects of that program, including the estimated costs, schedules, timing, and relationship of those projects with other projects;

(3) an identification of the financial responsibility for the specific projects of that program and the sources of the amounts for the projects;

(4) an operating plan for the construction period of the improvements that shows a coordinated approach to scheduling intercity and commuter trains;

(5) an operating plan for the coordinated scheduling of intercity and commuter trains for the period after the program is completed, including priority scheduling, dispatching, and occupancy of tracks for appropriately frequent, regularly scheduled intercity rail passenger transportation between Boston, Massachusetts, and New York, New York, in not more than 3 hours, including intermediate stops;

(6) a comprehensive plan to control future congestion in the Northeast Corridor attributable to increases in intercity and commuter rail passenger transportation;

(7) an assessment of long-term operational safety needs and a list of specific projects designed to maximize operational safety; and

(8) comments that Amtrak submits to the Secretary on the plan.

(b) SUBMITTING MODIFICATIONS OF PLAN TO CONGRESS.—The Secretary shall submit to Congress any modification made to the program master plan and comments that Amtrak submits on the modification.

**§ 24904. General authority**

(a) GENERAL.—To carry out this chapter and the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

(1) acquire, maintain, and dispose of any interest in property used to provide improved high-speed rail transportation under section 24902 of this title;

(2) acquire any interest in real property that Amtrak considers necessary to carry out the goals of section 24902;

(3) provide for rail freight, intercity rail passenger, and commuter rail passenger transportation over property acquired under this section;

(4) improve rail rights of way between Boston, Massachusetts, and the District of Columbia (including the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to achieve the goals of section 24902 of providing improved high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, and intermediate intercity markets;

(5) acquire, build, improve, and install passenger stations, communications and electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities and equipment necessary to provide improved high-speed rail passenger transportation over rights of way improved under clause (4) of this subsection;

(6) make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.);

(7) appoint a general manager of the Northeast Corridor improvement program; and

(8) make agreements with telecommunications common carriers, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to continue existing, and establish new and improved, passenger radio mobile telephone service in the high-speed rail passenger transportation area specified in section 24902(a)(1) and (2).

(b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail passenger transportation provided under subsection (a)(3) of this section shall be provided under compensatory agreements with the responsible carriers.

(c) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES.—(1) An agreement under subsection (a)(6) of this section shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The Commission shall assign to a rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

(3) This subsection does not prevent the parties from making an agreement under subsection (a)(6) of this section after the Commission makes a decision under this subsection.

#### **§ 24905. Coordination board and safety committee**

(a) NORTHEAST CORRIDOR COORDINATION BOARD.—(1) The Northeast Corridor Coordination Board is composed of the following members:

(A) one individual from each commuter authority (as defined in section 1135(a) of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1104)) that provides or makes a contract to provide commuter rail passenger transportation over the main line of the Northeast Corridor.

(B) 2 individuals selected by Amtrak.

(C) one individual selected by the Consolidated Rail Corporation.

(2) The Board shall recommend to Amtrak—

(A) policies that ensure equitable access to the Northeast Corridor, considering the need for equitable access by commuter and intercity rail passenger transportation and the requirements of section 24308(c) of this title; and

(B) equitable policies for the Northeast Corridor related to—

(i) dispatching;

(ii) public information;

(iii) maintaining equipment and facilities;

(iv) major capital facility investments; and

(v) harmonizing equipment acquisitions, rates, and schedules.

(3) The Board may recommend to the board of directors and President of Amtrak action necessary to resolve differences on providing transportation, except for facilities and transportation matters under section 24308(a) or 24904(a)(5) and (c) of this title.

(b) NORTHEAST CORRIDOR SAFETY COMMITTEE.—(1) The Northeast Corridor Safety Committee is composed of members appointed by the Secretary of Transportation. The members shall be representatives of—

(A) the Secretary;

(B) Amtrak;

(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;

(D) commuter agencies;

(E) rail passengers;

(F) rail labor; and

(G) other individuals and organizations the Secretary decides have a significant interest in rail safety.

(2) The Secretary shall consult with the Committee about safety improvements on the Northeast Corridor main line. The Committee shall meet at least once every 2 years to consider safety matters on the main line.

(3) At the beginning of the first session of each Congress, the Secretary shall submit a report to Congress on the status of efforts to improve safety on the Northeast Corridor main line. The report shall include the safety recommendations of the Committee and the comments of the Secretary on those recommendations.

(4) The Committee shall cease to exist on January 1, 1999, or on another date the Secretary decides is appropriate. The Secretary shall notify Congress in writing of a decision to terminate the Committee on another date.

#### **§ 24906. Eliminating highway at-grade crossings**

(a) PLAN.—In consultation with the States on the main line of the Northeast Corridor, the Secretary of Transportation shall develop a plan not later than September 30, 1993, to eliminate all highway at-grade crossings of the main line by not later than December 31, 1997. The plan may provide that eliminating a crossing is not required if—

(1) impracticable or unnecessary; and

(2) using the crossing is consistent with conditions the Secretary considers appropriate to ensure safety.

(b) AMTRAK'S SHARE OF COSTS.—Amtrak shall pay 20 percent of the cost of eliminating each highway at-grade crossing under the plan.



**§ 24907. Note and mortgage**

(a) GENERAL AUTHORITY.—To secure amounts expended by the United States Government to acquire and improve rail property designated under section 206(c)(1)(C) and (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C) and (D)), the Secretary of Transportation may obtain a note of indebtedness from, and make a mortgage agreement with, Amtrak to establish a mortgage lien on the property for the Government. The note and mortgage may not supersede section 24904 of this title.

(b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agreement under subsection (a) of this section, and a transaction related to the note or agreement, are exempt from any United States, State, or local law or regulation that regulates securities or the issuance of securities. The note, agreement, or transaction under this section has the same immunities from other laws that section 601 of the Act (45 U.S.C. 791) gives to transactions that comply with or carry out the final system plan. The transfer of rail property because of the note, agreement, or transaction has the same exemptions, privileges, and immunities that the Act (45 U.S.C. 701 et seq.) gives to a transfer ordered or approved by the special court under section 303(b) of the Act (45 U.S.C. 743(b)).

(c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its board of directors, and its individual directors are not liable because Amtrak has given or issued the note or agreement to the Government under subsection (a) of this section. Immunity granted under this subsection also applies to a transaction related to the note or agreement. The Government shall indemnify Amtrak, its board, and individual directors against costs and expenses actually and reasonably incurred in defending a civil action testing the validity of the note, agreement, or transaction.

**§ 24908. Transfer taxes and levies and recording charges**

A transfer of an interest in rail property under this chapter is exempt from a tax or levy related to the transfer that is imposed by the United States Government, a State, or a political subdivision of a State. On payment of the appropriate and generally applicable charge for the service performed, a transferee or transferor may record an instrument and, consistent with the final system plan, the release or removal of a pre-existing lien or encumbrance of record related to the interest transferred.

**§ 24909. Authorization of appropriations**

(a) GENERAL.—(1) Not more than \$2,313,000,000 may be appropriated to the Secretary of Transportation to achieve the goals of section 24902(a)(1) of this title. From this amount, the following amounts shall be expended by Amtrak:

(A) at least \$27,000,000 for equipment modification and replacement that a State or a local or regional transportation authority must bear because of the electrification conversion system of the Northeast Corridor under this chapter.

(B) \$30,000,000—

(i) to improve the main line track between the Northeast Corridor main line and Atlantic City, New Jersey, to ensure that the track, consistent with a plan New Jersey developed in consultation with Amtrak to provide rail passenger transportation between the Northeast Corridor main line and Atlantic City, New Jersey, would be of sufficient quality to allow safe rail passenger transportation at a minimum of 79 miles an hour not later than September 30, 1985; and

(ii) to promote rail passenger use of the track.

(C) necessary amounts to—

(i) develop Union Station in the District of Columbia;

(ii) install 189 track-miles, and renew 133 track-miles, of concrete ties with continuously welded rail between the District of Columbia and New York, New York;

(iii) install reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

(iv) restore ditch drainage in concrete tie locations between the District of Columbia and New York, New York;

(v) undercut 83 track-miles between the District of Columbia and New York, New York;

(vi) rehabilitate bridges between the District of Columbia and New York, New York (including Hi line);

(vii) develop a maintenance of way equipment repair facility between the District of Columbia and New York, New York, and build maintenance of way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut;

(viii) stabilize the roadbed between the District of Columbia and New York, New York;

(ix) automate the Bush River Drawbridge at milepost 72.14;

(x) improve the New York Service Facility to develop rolling stock repair capability;

(xi) install a rail car washer facility at Philadelphia, Pennsylvania;

(xii) restore storage tracks and buildings at the Washington Service Facility;

1 (xiii) install centralized traffic control from Landlith, Delaware,  
2 to Philadelphia, Pennsylvania;

3 (xiv) improve track, including high speed surfacing, ballast  
4 cleaning, and associated equipment repair and material distribu-  
5 tion;

6 (xv) rehabilitate interlockings between the District of Columbia  
7 and New York, New York;

8 (xvi) paint the Connecticut River, Groton, and Pelham Bay  
9 bridges;

10 (xvii) provide additional catenary renewal and power supply up-  
11 grading between the District of Columbia and New York, New  
12 York;

13 (xviii) rehabilitate structural, electrical, and mechanical systems  
14 at the 30th Street Station in Philadelphia, Pennsylvania;

15 (xix) install evacuation and fire protection facilities in tunnels  
16 in New York, New York;

17 (xx) improve the communication and signal systems between  
18 Wilmington, Delaware, and Boston, Massachusetts, on the North-  
19 east Corridor main line, and between Philadelphia, Pennsylvania,  
20 and Harrisburg, Pennsylvania, on the Harrisburg Line;

21 (xxi) improve the electric traction systems between Wilmington,  
22 Delaware, and Newark, New Jersey;

23 (xxii) install baggage rack restraints, seat back guards, and seat  
24 lock devices on 348 passenger cars operating in the Northeast  
25 Corridor;

26 (xxiii) install 44 event recorders and 10 electronic warning de-  
27 vices on locomotives operating within the Northeast Corridor; and

28 (xxiv) acquire cab signal test boxes and install 9 wayside loop  
29 code transmitters for use within the Northeast Corridor.

30 (2) The following additional amounts may be appropriated to the Sec-  
31 retary for expenditure by Amtrak:

32 (A) not more than \$150,000,000 to achieve the goal of section  
33 24902(a)(3) of this title.

34 (B) not more than \$120,000,000 to acquire interests in property in  
35 the Northeast Corridor.

36 (C) not more than \$650,000 to develop and use mobile radio fre-  
37 quencies for passenger radio mobile telephone service on high-speed rail  
38 passenger transportation.

39 (D) not more than \$20,000,000 to acquire and improve interests in  
40 rail property designated under section 206(c)(1)(D) of the Regional  
41 Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

1 (E) not more than \$37,000,000 to carry out section 24902(a)(7) and  
2 (j) of this title.

3 (b) EMERGENCY MAINTENANCE.—Not more than \$25,000,000 of the  
4 amount appropriated under the Act of February 28, 1975 (Public Law 94–  
5 6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail  
6 property designated under section 206(c)(1)(C) of the Regional Rail Reor-  
7 ganization Act of 1973 (45 U.S.C. 716(c)(1)(C)).

8 (c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated  
9 under subsection (a)(2)(B) and (D) of this section shall be used first to  
10 repay, with interest, obligations guaranteed under section 602 of the Rail  
11 Passenger Service Act, if the proceeds of those obligations were used to pay  
12 the expenses of acquiring interests in property referred to in subsection  
13 (a)(2)(B) and (D).

14 (d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING  
15 LOSSES.—Amounts appropriated under this section may not be used to sub-  
16 sidize operating losses of commuter rail or rail freight transportation.

17 (e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A  
18 project for which amounts are authorized under subsection (a)(1)(C) of this  
19 section is a part of the Northeast Corridor improvement program and is not  
20 a substitute for improvements specified in the document “Corridor Master  
21 Plan II, NECIP Restructured Program” of January, 1982. However, Am-  
22 trak may defer the project to carry out the improvement and rehabilitation  
23 for which amounts are authorized under subsection (a)(1)(B) of this section.  
24 The total cost of the project that Amtrak defers may not be substantially  
25 more than the amount Amtrak is required to expend or reserve under sub-  
26 section (a)(1)(B).

27 (2) Section 24902 of this title is deemed not to be fulfilled until the  
28 projects under subsection (a)(1)(C) of this section are completed.

29 (f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection  
30 (a)(1) and (2)(A) and (C)–(E) of this section remain available until ex-  
31 pended.

32 (g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—An  
33 amount greater than that authorized for a fiscal year may be appropriated  
34 to the extent that the amount appropriated for any prior fiscal year is less  
35 than the amount authorized for that year.

## 36 PART D—MISCELLANEOUS

### 37 CHAPTER 261—LAW ENFORCEMENT

Sec.

26101. Rail police officers.

26102. Limit on certain accident or incident liability.

## § 26101. Rail police officers

Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—

(1) employees, passengers, or patrons of the rail carrier;

(2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

## § 26102. Limit on certain accident or incident liability

(a) GENERAL.—When a publicly financed commuter transportation authority established under Virginia law makes a contract to indemnify Amtrak for liability for operations conducted by or for the authority or to indemnify a rail carrier over whose tracks those operations are conducted, liability against Amtrak, the authority, or the carrier for all claims (including punitive damages) arising from an accident or incident in the District of Columbia related to those operations may not be more than the limits of the liability coverage the authority maintains to indemnify Amtrak or the carrier.

(b) MINIMUM REQUIRED LIABILITY COVERAGE.—A publicly financed commuter transportation authority referred to in subsection (a) of this section must maintain a total minimum liability coverage of at least \$200,000,000.

(c) EFFECTIVENESS.—This section is effective only after Amtrak or a rail carrier seeking an indemnification contract under this section makes an operating agreement with a publicly financed commuter transportation authority established under Virginia law to provide access to its property for revenue transportation related to the operations of the authority.

# SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

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## 2                               PART A—GENERAL

## 3                               **CHAPTER 301—MOTOR VEHICLE SAFETY**

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## SUBCHAPTER I—GENERAL

**§ 30101. Purpose and policy**

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

- (1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and
- (2) to carry out needed safety research and development.

**§ 30102. Definitions**

(a) GENERAL DEFINITIONS.—In this chapter—

(1) “dealer” means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

(2) “defect” includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.

(3) “distributor” means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

(4) “interstate commerce” means commerce between a place in a State and a place in another State or between places in the same State through another State.

(5) “manufacturer” means a person—

(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(7) “motor vehicle equipment” means—

(A) any system, part, or component of a motor vehicle as originally manufactured;

(B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or

(C) any device or an article or apparel (except medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.

(8) “motor vehicle safety” means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against

unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

(9) “motor vehicle safety standard” means a minimum standard for motor vehicle or motor vehicle equipment performance.

(10) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(11) “United States district court” means a district court of the United States, a United States court for Guam, the Virgin Islands, and American Samoa, and the district court for the Northern Mariana Islands.

(b) LIMITED DEFINITIONS.—(1) In sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) “adequate repair” does not include repair resulting in substantially impaired operation of a motor vehicle or motor vehicle equipment;

(B) “first purchaser” means the first purchaser of a motor vehicle or motor vehicle equipment other than for resale;

(C) “original equipment” means motor vehicle equipment (including a tire) installed in or on a motor vehicle at the time of delivery to the first purchaser;

(D) “replacement equipment” means motor vehicle equipment (including a tire) that is not original equipment;

(E) a brand name owner of a tire marketed under a brand name not owned by the manufacturer of the tire is deemed to be the manufacturer of the tire;

(F) a defect in original equipment, or noncompliance of original equipment with a motor vehicle safety standard prescribed under this chapter, is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery to the first purchaser;

(G) a manufacturer of a motor vehicle in or on which original equipment was installed when delivered to the first purchaser is deemed to be the manufacturer of the equipment; and

(H) a retreader of a tire is deemed to be the manufacturer of the tire.

(2) The Secretary of Transportation may prescribe regulations amending paragraph (1)(C), (D), (F), or (G) of this subsection.



1   **§ 30103. Relationship to other laws**

2       (a) **UNIFORMITY OF REGULATIONS.**—The Secretary of Transportation  
3 may not prescribe a safety regulation related to a motor vehicle subject to  
4 subchapter II of chapter 105 of this title that differs from a motor vehicle  
5 safety standard prescribed under this chapter. However, the Secretary may  
6 prescribe, for a motor vehicle operated by a carrier subject to subchapter  
7 II of chapter 105, a safety regulation that imposes a higher standard of per-  
8 formance after manufacture than that required by an applicable standard  
9 in effect at the time of manufacture.

10       (b) **PREEMPTION.**—(1) When a motor vehicle safety standard is in effect  
11 under this chapter, a State or a political subdivision of a State may pre-  
12 scribe or continue in effect a standard applicable to the same aspect of per-  
13 formance of a motor vehicle or motor vehicle equipment only if the standard  
14 is identical to the standard prescribed under this chapter. However, the  
15 United States Government, a State, or a political subdivision of a State may  
16 prescribe a standard for a motor vehicle or motor vehicle equipment ob-  
17 tained for its own use that imposes a higher performance requirement than  
18 that required by the otherwise applicable standard under this chapter.

19       (2) A State may enforce a standard that is identical to a standard pre-  
20 scribed under this chapter.

21       (c) **ANTITRUST LAWS.**—This chapter does not—

22           (1) exempt from the antitrust laws conduct that is unlawful under  
23 those laws; or

24           (2) prohibit under the antitrust laws conduct that is lawful under  
25 those laws.

26       (d) **WARRANTY OBLIGATIONS AND ADDITIONAL LEGAL RIGHTS AND**  
27 **REMEDIES.**—Sections 30117(b), 30118–30121, 30166(f), and 30167(a) and  
28 (b) of this title do not establish or affect a warranty obligation under a law  
29 of the United States or a State. A remedy under those sections and sections  
30 30161 and 30162 of this title is in addition to other rights and remedies  
31 under other laws of the United States or a State.

32       (e) **COMMON LAW LIABILITY.**—Compliance with a motor vehicle safety  
33 standard prescribed under this chapter does not exempt a person from li-  
34 ability at common law.

35   **§ 30104. Authorization of appropriations**

36       The following amounts may be appropriated to the Secretary of Transpor-  
37 tation for the National Highway Traffic Safety Administration to carry out  
38 this chapter:

39           (1) \$71,333,436 for the fiscal year ending September 30, 1993.

40           (2) \$74,044,106 for the fiscal year ending September 30, 1994.

41           (3) \$76,857,782 for the fiscal year ending September 30, 1995.

## SUBCHAPTER II—STANDARDS AND COMPLIANCE

**§ 30111. Standards**

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

(c) COOPERATION.—The Secretary may advise, assist, and cooperate with departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies in developing motor vehicle safety standards.

(d) EFFECTIVE DATES OF STANDARDS.—The Secretary shall specify the effective date of a motor vehicle safety standard prescribed under this chapter in the order prescribing the standard. A standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed. However, the Secretary may prescribe a different effective date after finding, for good cause shown, that a different effective date is in the public interest and publishing the reasons for the finding.

(e) 5-YEAR PLAN FOR TESTING STANDARDS.—The Secretary shall establish and periodically review and update on a continuing basis a 5-year plan for testing motor vehicle safety standards prescribed under this chapter that the Secretary considers capable of being tested. In developing the plan and establishing testing priorities, the Secretary shall consider factors the Secretary considers appropriate, consistent with section 30101 of this title and the Secretary's other duties and powers under this chapter. The Secretary may change at any time those priorities to address matters the Secretary considers of greater priority. The initial plan may be the 5-year plan for compliance testing in effect on December 18, 1991.

**§ 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment**

(a) GENERAL.—Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person may not

1 manufacture for sale, sell, offer for sale, introduce or deliver for introduc-  
 2 tion in interstate commerce, or import into the United States, any motor  
 3 vehicle or motor vehicle equipment manufactured on or after the date an  
 4 applicable motor vehicle safety standard prescribed under this chapter takes  
 5 effect unless the vehicle or equipment complies with the standard and is cov-  
 6 ered by a certification issued under section 30115 of this title.

7 (b) NONAPPLICATION.—This section does not apply to—

8 (1) the sale, offer for sale, or introduction or delivery for introduc-  
 9 tion in interstate commerce of a motor vehicle or motor vehicle equip-  
 10 ment after the first purchase of the vehicle or equipment in good faith  
 11 other than for resale;

12 (2) a person—

13 (A) establishing that the person had no reason to know, despite  
 14 exercising reasonable care, that a motor vehicle or motor vehicle  
 15 equipment does not comply with applicable motor vehicle safety  
 16 standards prescribed under this chapter; or

17 (B) holding, without knowing about the noncompliance and be-  
 18 fore the vehicle or equipment is first purchased in good faith other  
 19 than for resale, a certificate issued by a manufacturer or importer  
 20 stating the vehicle or equipment complies with applicable stand-  
 21 ards prescribed under this chapter;

22 (3) a motor vehicle or motor vehicle equipment intended only for ex-  
 23 port, labeled for export on the vehicle or equipment and on the outside  
 24 of any container of the vehicle or equipment, and exported;

25 (4) a motor vehicle the Secretary of Transportation decides under  
 26 section 30141 of this title is capable of complying with applicable  
 27 standards prescribed under this chapter;

28 (5) a motor vehicle imported for personal use by an individual who  
 29 receives an exemption under section 30142 of this title;

30 (6) a motor vehicle under section 30143 of this title imported by an  
 31 individual employed outside the United States;

32 (7) a motor vehicle under section 30144 of this title imported on a  
 33 temporary basis;

34 (8) a motor vehicle or item of motor vehicle equipment under section  
 35 30145 of this title requiring further manufacturing; or

36 (9) a motor vehicle that is at least 25 years old.

### 37 **§ 30113. General exemptions**

38 (a) DEFINITION.—In this section, “low-emission motor vehicle” means a  
 39 motor vehicle meeting the standards for new motor vehicles applicable to the  
 40 vehicle under section 202 of the Clean Air Act (42 U.S.C. 7521) when the

1 vehicle is manufactured and emitting an air pollutant in an amount signifi-  
 2 cantly below one of those standards.

3 (b) AUTHORITY TO EXEMPT AND PROCEDURES.—(1) The Secretary of  
 4 Transportation may exempt, on a temporary basis, motor vehicles from a  
 5 motor vehicle safety standard prescribed under this chapter on terms the  
 6 Secretary considers appropriate. An exemption may be renewed. A renewal  
 7 may be granted only on reapplication and must conform to the requirements  
 8 of this subsection.

9 (2) The Secretary may begin a proceeding under this subsection when a  
 10 manufacturer applies for an exemption or a renewal of an exemption. The  
 11 Secretary shall publish notice of the application and provide an opportunity  
 12 to comment. An application for an exemption or for a renewal of an exemp-  
 13 tion shall be filed at a time and in the way, and contain information, this  
 14 section and the Secretary require.

15 (3) The Secretary may act under this subsection on finding that—

16 (A) an exemption is consistent with the public interest and this chap-  
 17 ter; and

18 (B)(i) compliance with the standard would cause substantial eco-  
 19 nomic hardship to a manufacturer that has tried to comply with the  
 20 standard in good faith;

21 (ii) the exemption would make easier the development or field evalua-  
 22 tion of a new motor vehicle safety feature providing a safety level at  
 23 least equal to the safety level of the standard;

24 (iii) the exemption would make the development or field evaluation  
 25 of a low-emission motor vehicle easier and would not unreasonably  
 26 lower the safety level of that vehicle; or

27 (iv) compliance with the standard would prevent the manufacturer  
 28 from selling a motor vehicle with an overall safety level at least equal  
 29 to the overall safety level of nonexempt vehicles.

30 (c) CONTENTS OF APPLICATIONS.—A manufacturer applying for an ex-  
 31emption under subsection (b) of this section shall include the following in-  
 32formation in the application:

33 (1) if the application is made under subsection (b)(3)(B)(i) of this  
 34 section, a complete financial statement describing the economic hard-  
 35 ship and a complete description of the manufacturer's good faith effort  
 36 to comply with each motor vehicle safety standard prescribed under  
 37 this chapter from which the manufacturer is requesting an exemption.

38 (2) if the application is made under subsection (b)(3)(B)(ii) of this  
 39 section, a record of the research, development, and testing establishing  
 40 the innovative nature of the safety feature and a detailed analysis es-

1       tablishing that the safety level of the feature at least equals the safety  
2       level of the standard.

3       (3) if the application is made under subsection (b)(3)(B)(iii) of this  
4       section, a record of the research, development, and testing establishing  
5       that the motor vehicle is a low-emission motor vehicle and that the  
6       safety level of the vehicle is not lowered unreasonably by exemption  
7       from the standard.

8       (4) if the application is made under subsection (b)(3)(B)(iv) of this  
9       section, a detailed analysis showing how the vehicle provides an overall  
10      safety level at least equal to the overall safety level of nonexempt vehi-  
11      cles.

12      (d) ELIGIBILITY.—A manufacturer is eligible for an exemption under sub-  
13      section (b)(3)(B)(i) of this section only if the Secretary determines that the  
14      manufacturer's total motor vehicle production in the most recent year of  
15      production is not more than 10,000. A manufacturer is eligible for an ex-  
16      emption under subsection (b)(3)(B)(ii), (iii), or (iv) of this section only if  
17      the Secretary determines the exemption is for not more than 2,500 vehicles  
18      to be sold in the United States in any 12-month period.

19      (e) MAXIMUM PERIOD.—An exemption or renewal under subsection  
20      (b)(3)(B)(i) of this section may be granted for not more than 3 years. An  
21      exemption or renewal under subsection (b)(3)(B)(ii), (iii), or (iv) of this sec-  
22      tion may be granted for not more than 2 years.

23      (f) DISCLOSURE.—The Secretary may make public, by the 10th day after  
24      an application is filed, information contained in the application or relevant  
25      to the application unless the information concerns or is related to a trade  
26      secret or other confidential information not relevant to the application.

27      (g) NOTICE OF DECISION.—The Secretary shall publish in the Federal  
28      Register a notice of each decision granting an exemption under this section  
29      and the reasons for granting it.

30      (h) PERMANENT LABEL REQUIREMENT.—The Secretary shall require a  
31      permanent label to be fixed to a motor vehicle granted an exemption under  
32      this section. The label shall either name or describe each motor vehicle safe-  
33      ty standard prescribed under this chapter from which the vehicle is exempt.  
34      The Secretary may require that written notice of an exemption be delivered  
35      by appropriate means to the dealer and the first purchaser of the vehicle  
36      other than for resale.

### 37      **§ 30114. Special exemptions**

38      The Secretary of Transportation may exempt a motor vehicle or item of  
39      motor vehicle equipment from section 30112(a) of this title on terms the  
40      Secretary decides are necessary for research, investigations, demonstrations,  
41      training, or competitive racing events.

**§ 30115. Certification of compliance**

A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered.

**§ 30116. Defects and noncompliance found before sale to purchaser**

(a) ACTIONS REQUIRED OF MANUFACTURERS AND DISTRIBUTORS.—If, after a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and before the distributor or dealer sells the vehicle or equipment, it is decided that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with applicable motor vehicle safety standards prescribed under this chapter—

(1) the manufacturer or distributor immediately shall repurchase the vehicle or equipment at the price paid by the distributor or dealer, plus transportation charges and reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect to the date of repurchase; or

(2) if a vehicle, the manufacturer or distributor immediately shall give to the distributor or dealer at the manufacturer's or distributor's own expense, the part or equipment needed to make the vehicle comply with the standards or correct the defect.

(b) DISTRIBUTOR OR DEALER INSTALLATION.—The distributor or dealer shall install the part or equipment referred to in subsection (a)(2) of this section. If the distributor or dealer installs the part or equipment with reasonable diligence after it is received, the manufacturer shall reimburse the distributor or dealer for the reasonable value of the installation and a reasonable reimbursement of at least one percent a month of the manufacturer's or distributor's selling price prorated from the date of notice of noncompliance or defect to the date the motor vehicle complies with applicable motor vehicle safety standards prescribed under this chapter or the defect is corrected.

(c) ESTABLISHING AMOUNT DUE AND CIVIL ACTIONS.—The parties shall establish the value of installation and the amount of reimbursement under this section. If the parties do not agree, or if a manufacturer or distributor refuses to comply with subsection (a) or (b) of this section, the distributor

or dealer purchasing the motor vehicle or motor vehicle equipment may bring a civil action. The action may be brought in a United States district court for the judicial district in which the manufacturer or distributor resides, is found, or has an agent, to recover damages, court costs, and a reasonable attorney's fee. An action under this section must be brought not later than 3 years after the claim accrues.

**§ 30117. Providing information to, and maintaining records on, purchasers**

(a) PROVIDING INFORMATION AND NOTICE.—The Secretary of Transportation may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:

(1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturer, in a way the Secretary decides is appropriate.

(2) to the first purchaser of a vehicle or equipment other than for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

(b) MAINTAINING PURCHASER RECORDS AND PROCEDURES.—(1) A manufacturer of a motor vehicle or tire (except a retreaded tire) shall cause to be maintained a record of the name and address of the first purchaser of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall cause to be maintained a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. The Secretary may prescribe by regulation the records to be maintained and reasonable procedures for maintaining the records under this subsection, including procedures to be followed by distributors and dealers to assist the manufacturer in obtaining the information required by this subsection. A procedure shall be reasonable for the type of vehicle or tire involved, and shall provide reasonable assurance that a customer list of a distributor or dealer, or similar information, will be made available to a person (except the distributor or dealer) only when necessary to carry out this subsection and sections 30118–30121, 30166(f), and 30167 (a) and (b) of this title. Availability of assistance from a distributor or dealer does not affect an obligation of a manufacturer under this subsection.

(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may require a distributor or dealer to maintain a record under para-

graph (1) of this subsection only if the business of the distributor or dealer is owned or controlled by a manufacturer of tires.

(B) The Secretary shall require each distributor and dealer whose business is not owned or controlled by a manufacturer of tires to give a registration form (containing the tire identification number) to the first purchaser of a tire. The Secretary shall prescribe the form, which shall be standardized for all tires and designed to allow the purchaser to complete and return it directly to the manufacturer of the tire. The manufacturer shall give sufficient copies of forms to distributors and dealers.

(3)(A) The Secretary shall evaluate from time to time how successful the procedures under paragraph (2) of this subsection have been in helping to maintain records about first purchasers of tires. After each evaluation, the Secretary shall decide—

(i) the extent to which distributors and dealers have complied with the procedures;

(ii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires; and

(iii) whether to prescribe for manufacturers, distributors, or dealers other requirements that the Secretary decides will increase significantly the percentage of first purchasers of tires about whom records are maintained.

(B) The Secretary may prescribe a requirement under subparagraph (A) of this paragraph only if the Secretary decides it is necessary to reduce the risk to motor vehicle safety, after considering—

(i) the cost of the requirement to manufacturers and the burden of the requirement on distributors and dealers, compared to the increase in the percentage of first purchasers of tires about whom records would be maintained as a result of the requirement;

(ii) the extent to which distributors and dealers have complied with the procedures in paragraph (2) of this subsection; and

(iii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires.

(C) A manufacturer of tires shall reimburse distributors and dealers of that manufacturer's tires for all reasonable costs incurred by the distributors and dealers in complying with a requirement prescribed by the Secretary under subparagraph (A) of this paragraph.

(D) After making a decision under subparagraph (A) of this paragraph, the Secretary shall submit to each House of Congress a report containing a detailed statement of the decision and an explanation of the reasons for the decision.



**§ 30118. Notification of defects and noncompliance**

(a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation shall notify the manufacturer of a motor vehicle or replacement equipment immediately after making an initial decision (through testing, inspection, investigation, or research carried out under this chapter, examining communications under section 30166(f) of this title, or otherwise) that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The notification shall include the information on which the decision is based. The Secretary shall publish a notice of each decision under this subsection in the Federal Register. Subject to section 30167(a) of this title, the notification and information are available to any interested person.

(b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—(1) The Secretary may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter only after giving the manufacturer an opportunity to present information, views, and arguments showing that there is no defect or noncompliance or that the defect does not affect motor vehicle safety. Any interested person also shall be given an opportunity to present information, views, and arguments.

(2) If the Secretary decides under paragraph (1) of this subsection that the vehicle or equipment contains the defect or does not comply, the Secretary shall order the manufacturer to—

(A) give notification under section 30119 of this title to the owners, purchasers, and dealers of the vehicle or equipment of the defect or noncompliance; and

(B) remedy the defect or noncompliance under section 30120 of this title.

(c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a motor vehicle or replacement equipment shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(d) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary

may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(e) HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.—On the motion of the Secretary or on petition of any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the notification requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

### **§ 30119. Notification procedures**

(a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer required under section 30118 of this title of a defect or noncompliance shall contain—

- (1) a clear description of the defect or noncompliance;
- (2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;
- (3) the measures to be taken to obtain a remedy of the defect or noncompliance;
- (4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title;
- (5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title;
- (6) the procedure the recipient of a notice is to follow to inform the Secretary of Transportation when a manufacturer, distributor, or dealer does not remedy the defect or noncompliance without charge under section 30120 of this title; and
- (7) other information the Secretary prescribes by regulation.

(b) EARLIEST REMEDY DATE.—The date specified by a manufacturer in a notification under subsection (a)(5) of this section or section 30121(c)(2) of this title is the earliest date that parts and facilities reasonably can be expected to be available to remedy the defect or noncompliance. The Secretary may disapprove the date.

(c) TIME FOR NOTIFICATION.—Notification required under section 30118 of this title shall be given within a reasonable time—

1 (1) prescribed by the Secretary, after the manufacturer receives no-  
 2 tice of a final decision under section 30118(b) of this title; or

3 (2) after the manufacturer first decides that a safety-related defect  
 4 or noncompliance exists under section 30118(c) of this title.

5 (d) MEANS OF PROVIDING NOTIFICATION.—(1) Notification required  
 6 under section 30118 of this title about a motor vehicle shall be sent by first  
 7 class mail—

8 (A) to each person registered under State law as the owner and  
 9 whose name and address are reasonably ascertainable by the manufac-  
 10 turer through State records or other available sources; or

11 (B) if a registered owner is not notified under clause (A) of this  
 12 paragraph, to the most recent purchaser known to the manufacturer.

13 (2) Notification required under section 30118 of this title about replace-  
 14 ment equipment (except a tire) shall be sent by first class mail to the most  
 15 recent purchaser known to the manufacturer. In addition, if the Secretary  
 16 decides that public notice is required for motor vehicle safety, public notice  
 17 shall be given in the way required by the Secretary after consulting with  
 18 the manufacturer.

19 (3) Notification required under section 30118 of this title about a tire  
 20 shall be sent by first class mail (or, if the manufacturer prefers, by certified  
 21 mail) to the most recent purchaser known to the manufacturer. In addition,  
 22 if the Secretary decides that public notice is required for motor vehicle safe-  
 23 ty, public notice shall be given in the way required by the Secretary after  
 24 consulting with the manufacturer. In deciding whether public notice is re-  
 25 quired, the Secretary shall consider—

26 (A) the magnitude of the risk to motor vehicle safety caused by the  
 27 defect or noncompliance; and

28 (B) the cost of public notice compared to the additional number of  
 29 owners the notice may reach.

30 (4) A dealer to whom a motor vehicle or replacement equipment was de-  
 31 livered shall be notified by certified mail or quicker means if available.

32 (e) SECOND NOTIFICATION.—If the Secretary decides that a notification  
 33 sent by a manufacturer under this section has not resulted in an adequate  
 34 number of motor vehicles or items of replacement equipment being returned  
 35 for remedy, the Secretary may order the manufacturer to send a 2d notifi-  
 36 cation in the way the Secretary prescribes by regulation.

37 (f) NOTIFICATION BY LESSOR TO LESSEE.—(1) In this subsection,  
 38 “leased motor vehicle” means a motor vehicle that is leased to a person for  
 39 at least 4 months by a lessor that has leased at least 5 motor vehicles in  
 40 the 12 months before the date of the notification.

(2) A lessor that receives a notification required by section 30118 of this title about a leased motor vehicle shall provide a copy of the notification to the lessee in the way the Secretary prescribes by regulation.

**§ 30120. Remedies for defects and noncompliance**

(a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to impose conditions on the replacement of a motor vehicle or refund of its price.

(b) TIRE REMEDIES.—(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—

(A) the day the owner or purchaser receives notification under section 30119 of this title; or

(B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(c) ADEQUACY OF REPAIRS.—(1) If a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the

1 repair is not done adequately within a reasonable time, the manufacturer  
2 shall—

3 (A) replace the vehicle or equipment with an identical or reasonably  
4 equivalent vehicle or equipment; or

5 (B) for a vehicle, refund the purchase price, less a reasonable allow-  
6 ance for depreciation.

7 (2) Failure to repair a motor vehicle or replacement equipment ade-  
8 quately not later than 60 days after its presentation is prima facie evidence  
9 of failure to repair within a reasonable time. However, the Secretary may  
10 extend, by order, the 60-day period if good cause for an extension is shown  
11 and the reason is published in the Federal Register before the period ends.  
12 Presentation of a vehicle or equipment for repair before the date specified  
13 by a manufacturer in a notice under section 30119(a)(5) or 30121(c)(2) of  
14 this title is not a presentation under this subsection.

15 (d) FILING MANUFACTURER'S REMEDY PROGRAM.—A manufacturer  
16 shall file with the Secretary a copy of the manufacturer's program under  
17 this section for remedying a defect or noncompliance. The Secretary shall  
18 make the program available to the public and publish a notice of availability  
19 in the Federal Register.

20 (e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the mo-  
21 tion of the Secretary or on application by any interested person, the Sec-  
22 retary may conduct a hearing to decide whether the manufacturer has rea-  
23 sonably met the remedy requirements under this section. Any interested per-  
24 son may make written and oral presentations of information, views, and ar-  
25 guments on whether the manufacturer has reasonably met the remedy re-  
26 quirements. If the Secretary decides a manufacturer has not reasonably met  
27 the remedy requirements, the Secretary shall order the manufacturer to  
28 take specified action to meet those requirements and may take any other  
29 action authorized under this chapter.

30 (f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair  
31 reimbursement to a dealer providing a remedy without charge under this  
32 section.

33 (g) NONAPPLICATION.—(1) The requirement that a remedy be provided  
34 without charge does not apply if the motor vehicle or replacement equipment  
35 was bought by the first purchaser more than 8 calendar years, or the tire,  
36 including an original equipment tire, was bought by the first purchaser  
37 more than 3 calendar years, before notice is given under section 30118(c)  
38 of this title or an order is issued under section 30118(b) of this title, which-  
39 ever is earlier.

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(i) LIMITATION ON SALE OR LEASE.—(1) If notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title and the manufacturer has provided to a dealer notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(2) This subsection does not prohibit a dealer from offering for sale or lease the vehicle or equipment.

**§ 30121. Provisional notification and civil actions to enforce**

(a) PROVISIONAL NOTIFICATION.—(1) The Secretary of Transportation may order a manufacturer to issue a provisional notification if a civil action about an order issued under section 30118(b) of this title has been brought under section 30163 of this title. The provisional notification shall contain—

(A) a statement that the Secretary has decided that a defect related to motor vehicle safety or noncompliance with a motor vehicle safety standard prescribed under this chapter exists and that the manufacturer is contesting the decision in a civil action in a United States district court;

(B) a clear description of the Secretary's stated basis for the decision;

(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;

1 (D) measures the Secretary considers necessary to avoid an unrea-  
2 sonable risk to motor vehicle safety resulting from the defect or non-  
3 compliance;

4 (E) a statement that the manufacturer will remedy the defect or  
5 noncompliance without charge under section 30120 of this title, but  
6 that the requirement to remedy without charge is conditioned on the  
7 outcome of the civil action; and

8 (F) other information the Secretary prescribes by regulation or in-  
9 cludes in the order requiring the notice.

10 (2) A notification under this subsection does not relieve a manufacturer  
11 of liability for not giving notification required by an order under section  
12 30118(b) of this title.

13 (b) CIVIL ACTIONS FOR NOT NOTIFYING.—(1) A manufacturer that does  
14 not notify owners and purchasers under section 30119(c) and (d) of this  
15 title is liable to the United States Government for a civil penalty, unless  
16 the manufacturer prevails in a civil action referred to in subsection (a) of  
17 this section or the court in that action enjoins enforcement of the order.  
18 Enforcement may be enjoined only if the court decides that the failure to  
19 notify is reasonable and that the manufacturer has demonstrated the likeli-  
20 hood of prevailing on the merits. If enforcement is enjoined, the manufac-  
21 turer is not liable during the time the order is stayed.

22 (2) A manufacturer that does not notify owners and purchasers as re-  
23 quired under subsection (a) of this section is liable for a civil penalty re-  
24 gardless of whether the manufacturer prevails in an action on the validity  
25 of the order issued under section 30118(b) of this title.

26 (c) ORDERS TO MANUFACTURERS.—If the Secretary prevails in a civil ac-  
27 tion referred to in subsection (a) of this section, the Secretary shall order  
28 the manufacturer—

29 (1) to notify each owner, purchaser, and dealer described in section  
30 30119(d) of this title of the outcome of the action and other informa-  
31 tion the Secretary requires, and notification under this clause may be  
32 combined with notification required under section 30118(b) of this title;

33 (2) to specify the earliest date under section 30119(b) of this title  
34 on which the defect or noncompliance will be remedied without charge  
35 under section 30120 of this title; and

36 (3) if notification was required under subsection (a) of this section,  
37 to reimburse an owner or purchaser for reasonable and necessary ex-  
38 penses (in an amount that is not more than the amount specified in  
39 the order of the Secretary under subsection (a)) incurred for repairing  
40 the defect or noncompliance during the period beginning on the date

that notification was required to be issued and ending on the date the owner or purchaser receives the notification under this subsection.

(d) VENUE.—Notwithstanding section 30163(c) of this title, a civil action about an order issued under section 30118(b) of this title must be brought in the United States district court for a judicial district in the State in which the manufacturer is incorporated or the District of Columbia. On motion of a party, the court may transfer the action to another district court if good cause is shown. All actions related to the same order under section 30118(b) shall be consolidated in an action in one judicial district under an order of the court in which the first action was brought. If the first action is transferred to another court, that court shall issue the consolidation order.

### **§ 30122. Making safety devices and elements inoperative**

(a) DEFINITION.—In this section, “motor vehicle repair business” means a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.

(b) PROHIBITION.—A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

(c) REGULATIONS.—The Secretary of Transportation may prescribe regulations—

(1) to exempt a person from this section if the Secretary decides the exemption is consistent with motor vehicle safety and section 30101 of this title; and

(2) to define “make inoperative”.

(d) NONAPPLICATION.—This section does not apply to a safety belt interlock or buzzer designed to indicate a safety belt is not in use as described in section 30124 of this title.

### **§ 30123. Tires**

(a) LABELING REQUIREMENT.—The Secretary of Transportation shall require that a pneumatic tire subject to a motor vehicle safety standard prescribed under this chapter be labeled permanently and conspicuously with safety information the Secretary decides is necessary to carry out section 30101 of this title.

(b) CONTENTS OF LABEL.—Labeling required on a tire under subsection (a) of this section shall include—



- 1 (1)(A) identification of the manufacturer;
- 2 (B) for a retreaded tire, identification of the retreader; or
- 3 (C) for a tire containing a brand name (other than the name of the
- 4 manufacturer), a code mark allowing a seller to identify the manufac-
- 5 turer to the purchaser;
- 6 (2) the composition of material used in the ply of the tire;
- 7 (3) the number of plies in the tire;
- 8 (4) the maximum allowable load for the tire; and
- 9 (5)(A) a statement that the tire complies with minimum safe per-
- 10 formance standards prescribed under this chapter; or
- 11 (B) a mark or symbol the Secretary prescribes for use by a manufac-
- 12 turer or retreader complying with those standards.
- 13 (c) ADDITIONAL INFORMATION.—The Secretary may require that addi-
- 14 tional safety information be disclosed to a purchaser when a tire is sold.
- 15 (d) REGROOVED TIRE LIMITATIONS.—(1) In this subsection, “regrooved
- 16 tire” means a tire with a new tread produced by cutting into the tread of
- 17 a worn tire.
- 18 (2) The Secretary may authorize the sale, offer for sale, introduction for
- 19 sale, or delivery for introduction in interstate commerce, of a regrooved tire
- 20 or a motor vehicle equipped with regrooved tires if the Secretary decides the
- 21 tires are designed and made in a way consistent with section 30101 of this
- 22 title. A person may not sell, offer for sale, introduce for sale, or deliver for
- 23 introduction in interstate commerce, a regrooved tire or a vehicle equipped
- 24 with regrooved tires unless authorized by the Secretary.
- 25 (e) UNIFORM QUALITY GRADING SYSTEM, NOMENCLATURE, AND MAR-
- 26 KETING PRACTICES.—The Secretary shall prescribe through standards a
- 27 uniform quality grading system for motor vehicle tires to help consumers
- 28 make an informed choice when purchasing tires. The Secretary also shall
- 29 cooperate with industry and the Federal Trade Commission to the greatest
- 30 extent practicable to eliminate deceptive and confusing tire nomenclature
- 31 and marketing practices. A tire standard or regulation prescribed under this
- 32 chapter supersedes an order or administrative interpretation of the Commis-
- 33 sion.
- 34 (f) MAXIMUM LOAD STANDARDS.—The Secretary shall require a motor
- 35 vehicle to be equipped with tires that meet maximum load standards when
- 36 the vehicle is loaded with a reasonable amount of luggage and the total
- 37 number of passengers the vehicle is designed to carry. The vehicle shall be
- 38 equipped with those tires by the manufacturer or by the first purchaser
- 39 when the vehicle is first bought in good faith other than for resale.

**§ 30124. Buzzers indicating nonuse of safety belts**

A motor vehicle safety standard prescribed under this chapter may not require or allow a manufacturer to comply with the standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt or a buzzer designed to indicate a safety belt is not in use, except a buzzer that operates only during the 8-second period after the ignition is turned to the “start” or “on” position.

**§ 30125. Schoolbuses and schoolbus equipment**

(a) DEFINITIONS.—In this section—

(1) “schoolbus” means a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school.

(2) “schoolbus equipment” means equipment designed primarily for a schoolbus or manufactured or sold to replace or improve a system, part, or component of a schoolbus or as an accessory or addition to a schoolbus.

(b) STANDARDS.—The Secretary shall prescribe motor vehicle safety standards for schoolbuses and schoolbus equipment manufactured in, or imported into, the United States. Standards shall include minimum performance requirements for—

- (1) emergency exits;
- (2) interior protection for occupants;
- (3) floor strength;
- (4) seating systems;
- (5) crashworthiness of body and frame (including protection against rollover hazards);
- (6) vehicle operating systems;
- (7) windows and windshields; and
- (8) fuel systems.

(c) TEST DRIVING BY MANUFACTURERS.—The Secretary may require by regulation a schoolbus to be test-driven by a manufacturer before introduction in commerce.

**§ 30126. Used motor vehicles**

To ensure a continuing and effective national safety program, it is the policy of the United States Government to encourage and strengthen State inspection of used motor vehicles. Therefore, the Secretary of Transportation shall prescribe uniform motor vehicle safety standards for all used motor vehicles. The standards shall be stated in terms of motor vehicle safety performance.

**§ 30127. Automatic occupant crash protection and seat belt use**

(a) DEFINITIONS.—In this section—

(1) “bus” means a motor vehicle with motive power (except a trailer) designed to carry more than 10 individuals.

(2) “multipurpose passenger vehicle” means a motor vehicle with motive power (except a trailer), designed to carry not more than 10 individuals, that is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) “passenger car” means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.

(4) “truck” means a motor vehicle with motive power (except a trailer) designed primarily to transport property or special purpose equipment.

(b) INFLATABLE RESTRAINT REQUIREMENTS.—(1) Not later than September 1, 1993, the Secretary of Transportation shall prescribe under this chapter an amendment to Federal Motor Vehicle Safety Standard 208 issued under the National Traffic and Motor Vehicle Safety Act of 1966. The amendment shall require that the automatic occupant crash protection system—

(A) for both of the front outboard seating positions for each of the following vehicles be an inflatable restraint complying with the occupant protection requirements under section 4.1.2.1 of Standard 208:

(i) 95 percent of each manufacturer’s annual production of passenger cars manufactured after August 31, 1996, and before September 1, 1997.

(ii) 80 percent of each manufacturer’s annual production of buses, multipurpose passenger vehicles, and trucks, except walk-in van-type trucks and vehicles designed to be sold only to the United States Postal Service, for buses, vehicles, and trucks with a gross vehicle weight rating of not more than 8,500 pounds and an unloaded vehicle weight of not more than 5,500 pounds manufactured after August 31, 1997, and before September 1, 1998; and

(B) for both of the front outboard seating positions for each of the following vehicles only be an inflatable restraint (with lap and shoulder belts) complying with the occupant protection requirement under section 4.1.2.1 of Standard 208:

(i) 100 percent of each manufacturer’s annual production of passenger cars manufactured after August 31, 1997.

1           (ii) 100 percent of each manufacturer's annual production of ve-  
2           hicles described in paragraph (1)(A)(ii) of this subsection manu-  
3           factured after August 31, 1998.

4           (2) Manufacturers may not use credits and incentives available before  
5           September 1, 1998, under the provisions of Standard 208 (as amended by  
6           this section) to comply with the requirements of paragraph (1)(B)(ii) of this  
7           subsection after August 31, 1998.

8           (c) OWNER MANUAL REQUIREMENTS.—In amending Standard 208, the  
9           Secretary of Transportation shall require, as soon as possible, that owner  
10          manuals for passenger cars, buses, multipurpose passenger vehicles, and  
11          trucks equipped with an inflatable restraint include a statement in an easily  
12          understandable format stating that—

13           (1) either or both of the front outboard seating positions of the vehi-  
14           cle are equipped with an inflatable restraint referred to as an “airbag”  
15           and a lap and shoulder belt;

16           (2) the “airbag” is a supplemental restraint and is not a substitute  
17           for lap and shoulder belts;

18           (3) lap and shoulder belts also must be used correctly by an occu-  
19           pant in a front outboard seating position to provide restraint or protec-  
20           tion from frontal crashes as well as other types of crashes or accidents;  
21           and

22           (4) occupants should always wear their lap and shoulder belts, if  
23           available, or other safety belts, whether or not there is an inflatable  
24           restraint.

25           (d) SEAT BELTS.—Congress finds that it is in the public interest for each  
26           State to adopt and enforce mandatory seat belt use laws and for the United  
27           States Government to adopt and enforce mandatory seat belt use regula-  
28           tions.

29           (e) TEMPORARY EXEMPTIONS.—(1) On application of a manufacturer,  
30           the Secretary of Transportation may exempt, on a temporary basis, motor  
31           vehicles of that manufacturer from any requirement under subsections (b)  
32           and (c) of this section on terms the Secretary considers appropriate. An ex-  
33           emption may be renewed.

34           (2) The Secretary of Transportation may grant an exemption under para-  
35           graph (1) of this subsection if the Secretary decides that there has been a  
36           disruption in the supply of any component of an inflatable restraint or in  
37           the use and installation by the manufacturer of that component because of  
38           an unavoidable event not under the control of the manufacturer that will  
39           prevent the manufacturer from meeting its anticipated production volume  
40           of vehicles with those restraints.

(3) Only an affected manufacturer may apply for an exemption. The Secretary of Transportation shall prescribe in the amendment to Standard 208 required under this section the information an affected manufacturer must include in its application under this subsection. The manufacturer shall specify in the application the models, lines, and types of vehicles affected. The Secretary may consolidate similar applications from different manufacturers.

(4) An exemption or renewal of an exemption is conditioned on the commitment of the manufacturer to recall the exempted vehicles for installation of the omitted inflatable restraints within a reasonable time that the manufacturer proposes and the Secretary of Transportation approves after the components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements.

(5) The Secretary of Transportation shall publish in the Federal Register a notice of each application under this subsection and each decision to grant or deny a temporary exemption and the reasons for the decision.

(6) The Secretary of Transportation shall require a label to be fixed to each exempted vehicle that can be removed only after recall and installation of the required inflatable restraint. The Secretary shall require that written notice of an exemption be provided to the dealer and the first purchaser of each exempted vehicle other than for resale, with the notice being provided in a way, and containing the information, the Secretary considers appropriate.

(f) APPLICATION.—(1) This section revises, but does not replace, Standard 208 as in effect on December 18, 1991, including the amendment of March 26, 1991 (56 Fed. Reg. 12472), to Standard 208, extending the requirements for automatic crash protection, with incentives for more innovative automatic crash protection, to trucks, buses, and multipurpose passenger vehicles. This section may not be construed as—

(A) affecting another provision of law carried out by the Secretary of Transportation applicable to passenger cars, buses, multipurpose passenger vehicles, or trucks; or

(B) establishing a precedent related to developing or prescribing a Government motor vehicle safety standard.

(2) This section and amendments to Standard 208 made under this section may not be construed as indicating an intention by Congress to affect any liability of a motor vehicle manufacturer under applicable law related to vehicles with or without inflatable restraints.

(g) REPORT.—(1) On October 1, 1992, and every 6 months after that date through October 1, 2000, the Secretary of Transportation shall submit reports on the effectiveness of occupant restraint systems as a percentage

1 reduction in fatalities or injuries of restrained occupants compared to unre-  
2 strained occupants for—

- 3 (A) a combination of inflated restraints and lap and shoulder belts;
- 4 (B) inflated restraints only; and
- 5 (C) lap and shoulder belts only.

6 (2) In consultation with the Secretaries of Labor and Defense, the Sec-  
7 retary of Transportation also shall provide information and analysis on lap  
8 and shoulder belt use, nationally and in each State by—

- 9 (A) military personnel;
- 10 (B) Government, State, and local law enforcement officers;
- 11 (C) other Government and State employees; and
- 12 (D) the public.

13 (h) AIRBAGS FOR GOVERNMENT CARS.—In cooperation with the Adminis-  
14 trator of General Services and the heads of appropriate departments, agen-  
15 cies, and instrumentalities of the Government, the Secretary of Transpor-  
16 tation shall establish a program, consistent with applicable procurement  
17 laws of the Government and available appropriations, requiring that all pas-  
18 senger cars acquired—

19 (1) after September 30, 1994, for use by the Government be  
20 equipped, to the maximum extent practicable, with driver-side inflatable  
21 restraints; and

22 (2) after September 30, 1996, for use by the Government be  
23 equipped, to the maximum extent practicable, with inflatable restraints  
24 for both front outboard seating positions.

### 25 SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR 26 VEHICLES AND EQUIPMENT

#### 27 **§ 30141. Importing motor vehicles capable of complying with** 28 **standards**

29 (a) GENERAL.—Section 30112(a) of this title does not apply to a motor  
30 vehicle if—

31 (1) on the initiative of the Secretary of Transportation or on petition  
32 of a manufacturer or importer registered under subsection (c) of this  
33 section, the Secretary decides—

34 (A) the vehicle is—

35 (i) substantially similar to a motor vehicle originally manu-  
36 factured for import into and sale in the United States;

37 (ii) certified under section 30115 of this title;

38 (iii) the same model year (as defined under regulations of  
39 the Secretary of Transportation) as the model of the motor  
40 vehicle it is being compared to; and

1 (iv) capable of being readily altered to comply with applica-  
 2 ble motor vehicle safety standards prescribed under this chap-  
 3 ter; or

4 (B) if there is no substantially similar United States motor vehi-  
 5 cle, the safety features of the vehicle comply with or are capable  
 6 of being altered to comply with those standards based on destruc-  
 7 tive test information or other evidence the Secretary of Transpor-  
 8 tation decides is adequate;

9 (2) the vehicle is imported by a registered importer; and

10 (3) the registered importer pays the annual fee the Secretary of  
 11 Transportation establishes under subsection (e) of this section to pay  
 12 for the costs of carrying out the registration program for importers  
 13 under subsection (c) of this section and any other fees the Secretary  
 14 of Transportation establishes to pay for the costs of—

15 (A) processing bonds provided to the Secretary of the Treasury  
 16 under subsection (d) of this section; and

17 (B) making the decisions under this subchapter.

18 (b) PROCEDURES ON DECIDING ON MOTOR VEHICLE CAPABILITY.—(1)  
 19 The Secretary of Transportation shall establish by regulation procedures for  
 20 making a decision under subsection (a)(1) of this section and the informa-  
 21 tion a petitioner must provide to show clearly that the motor vehicle is capa-  
 22 ble of being brought into compliance with applicable motor vehicle safety  
 23 standards prescribed under this chapter. In establishing the procedures, the  
 24 Secretary shall provide for a minimum period of public notice and written  
 25 comment consistent with ensuring expeditious, but complete, consideration  
 26 and avoiding delay by any person. In making a decision under those proce-  
 27 dures, the Secretary shall consider test information and other information  
 28 available to the Secretary, including any information provided by the manu-  
 29 facturer. If the Secretary makes a negative decision, the Secretary may not  
 30 make another decision for the same model until at least 3 calendar months  
 31 have elapsed after the negative decision.

32 (2) The Secretary of Transportation shall publish each year in the Fed-  
 33 eral Register a list of all decisions made under subsection (a)(1) of this sec-  
 34 tion. Each published decision applies to the model of the motor vehicle for  
 35 which the decision was made. A positive decision permits another importer  
 36 registered under subsection (c) of this section to import a vehicle of the  
 37 same model under this section if the importer complies with all the terms  
 38 of the decision.

39 (c) REGISTRATION.—(1) The Secretary of Transportation shall establish  
 40 procedures for registering a person who complies with requirements pre-  
 41 scribed by the Secretary by regulation under this subsection, including—

- 1 (A) recordkeeping requirements;
- 2 (B) inspection of records and facilities related to motor vehicles the  
3 person has imported, altered, or both; and
- 4 (C) requirements that ensure that the importer (or a successor in  
5 interest) will be able technically and financially to carry out responsibil-  
6 ities under sections 30117(b), 30118–30121, and 30166(f) of this title.
- 7 (2) The Secretary of Transportation shall deny registration to a person  
8 whose registration is revoked under paragraph (4) of this subsection.
- 9 (3) The Secretary of Transportation may deny registration to a person  
10 that is or was owned or controlled by, or under common ownership or con-  
11 trol with, a person whose registration was revoked under paragraph (4) of  
12 this subsection.
- 13 (4) The Secretary of Transportation shall establish procedures for—  
14 (A) revoking or suspending a registration issued under paragraph  
15 (1) of this subsection for not complying with a requirement of this sub-  
16 chapter or section 30112, 30115, 30117–30122, 30125(c), 30127, or  
17 30166 of this title or regulations prescribed under this subchapter or  
18 those sections;
- 19 (B) automatically suspending a registration for not paying a fee  
20 under subsection (a)(3) of this section in a timely manner or for know-  
21 ingly filing a false or misleading certification under section 30146 of  
22 this title; and
- 23 (C) reinstating suspended registrations.
- 24 (d) BONDS.—(1) A person importing a motor vehicle under this section  
25 shall provide a bond to the Secretary of the Treasury (acting for the Sec-  
26 retary of Transportation) and comply with the terms the Secretary of  
27 Transportation decides are appropriate to ensure that the vehicle—  
28 (A) will comply with applicable motor vehicle safety standards pre-  
29 scribed under this chapter within a reasonable time (specified by the  
30 Secretary of Transportation) after the vehicle is imported; or  
31 (B) will be exported (at no cost to the United States Government)  
32 by the Secretary of the Treasury or abandoned to the Government.
- 33 (2) The amount of the bond provided under this subsection shall be at  
34 least equal to the dutiable value of the motor vehicle (as determined by the  
35 Secretary of the Treasury) but not more than 150 percent of that value.
- 36 (e) FEE REVIEW, ADJUSTMENT, AND USE.—The Secretary of Transpor-  
37 tation shall review and make appropriate adjustments at least every 2 years  
38 in the amounts of the fees required to be paid under subsection (a)(3) of  
39 this section. The Secretary of Transportation shall establish the fees for  
40 each fiscal year before the beginning of that year. All fees collected remain  
41 available until expended without fiscal year limit to the extent provided in



advance by appropriation laws. The amounts are only for use by the Secretary of Transportation—

(1) in carrying out this section and sections 30146(a)–(c)(1), (d), and (e) and 30147(b) of this title; and

(2) in advancing to the Secretary of the Treasury amounts for costs incurred under this section and section 30146 of this title to reimburse the Secretary of the Treasury for those costs.

**§ 30142. Importing motor vehicles for personal use**

(a) GENERAL.—Section 30112(a) of this title does not apply to an imported motor vehicle if—

(1) the vehicle is imported for personal use, and not for resale, by an individual (except an individual described in sections 30143 and 30144 of this title);

(2) the vehicle is imported after January 31, 1990; and

(3) the individual takes the actions required under subsection (b) of this section to receive an exemption.

(b) EXEMPTIONS.—(1) To receive an exemption under subsection (a) of this section, an individual must—

(A) provide the Secretary of the Treasury (acting for the Secretary of Transportation) with—

(i) an appropriate bond in an amount determined under section 30141(d) of this title;

(ii) a copy of an agreement with an importer registered under section 30141(c) of this title for bringing the motor vehicle into compliance with applicable motor vehicle safety standards prescribed under this chapter; and

(iii) a certification that the vehicle meets the requirement of section 30141(a)(1)(A) or (B) of this title; and

(B) comply with appropriate terms the Secretary of Transportation imposes to ensure that the vehicle—

(i) will be brought into compliance with those standards within a reasonable time (specified by the Secretary of Transportation) after the vehicle is imported; or

(ii) will be exported (at no cost to the United States Government) by the Secretary of the Treasury or abandoned to the Government.

(2) For good cause shown, the Secretary of Transportation may allow an individual additional time, but not more than 30 days after the day on which the motor vehicle is offered for import, to comply with paragraph (1)(A)(ii) of this subsection.

**§ 30143. Motor vehicles imported by individuals employed outside the United States**

(a) DEFINITION.—In this section, “assigned place of employment” means—

(1) the principal location at which an individual is permanently or indefinitely assigned to work; and

(2) for a member of the uniformed services, the individual’s permanent duty station.

(b) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported for personal use, and not for resale, by an individual—

(1) whose assigned place of employment was outside the United States as of October 31, 1988, and who has not had an assigned place of employment in the United States from that date through the date the vehicle is imported into the United States;

(2) who previously had not imported a motor vehicle into the United States under this section or section 108(g) of the National Traffic and Motor Vehicle Safety Act of 1966 or, before October 31, 1988, under section 108(b)(3) of that Act;

(3) who acquired, or made a binding contract to acquire, the vehicle before October 31, 1988;

(4) who imported the vehicle into the United States not later than October 31, 1992; and

(5) who satisfies section 108(b)(3) of that Act as in effect on October 30, 1988.

(c) CERTIFICATION.—Subsection (b) of this section is carried out by certification in the form the Secretary of Transportation or the Secretary of the Treasury may prescribe.

**§ 30144. Importing motor vehicles on a temporary basis**

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported on a temporary basis for personal use by an individual who is a member of—

(1)(A) the personnel of the government of a foreign country on assignment in the United States or a member of the Secretariat of a public international organization designated under the International Organization Immunities Act (22 U.S.C. 288 et seq.); and

(B) the class of individuals for whom the Secretary of State has authorized free importation of motor vehicles; or

(2) the armed forces of a foreign country on assignment in the United States.

(b) VERIFICATION.—The Secretary of Transportation or the Secretary of the Treasury may require verification, that the Secretary of Transportation

considers appropriate, that an individual is a member described under subsection (a) of this section. The Secretary of Transportation shall ensure that a motor vehicle imported under this section will be exported (at no cost to the United States Government) or abandoned to the Government when the individual no longer—

(1) resides in the United States; and

(2) is a member described under subsection (a) of this section.

(c) SALE IN THE UNITED STATES.—A motor vehicle imported under this section may not be sold when in the United States.

**§ 30145. Importing motor vehicles or equipment requiring further manufacturing**

Section 30112(a) of this title does not apply to a motor vehicle or motor vehicle equipment if the vehicle or equipment—

(1) requires further manufacturing to perform its intended function as decided under regulations prescribed by the Secretary of Transportation; and

(2) is accompanied at the time of importation by a written statement issued by the manufacturer indicating the applicable motor vehicle safety standard prescribed under this chapter with which it does not comply.

**§ 30146. Release of motor vehicles and bonds**

(a) COMPLIANCE CERTIFICATION AND BOND.—(1) Except as provided in subsections (c) and (d) of this section, an importer registered under section 30141(c) of this title may license or register an imported motor vehicle for use on public streets, roads, or highways, or release custody of a motor vehicle imported by the registered importer or imported by an individual under section 30142 of this title and altered by the registered importer to meet applicable motor vehicle safety standards prescribed under this chapter to a person for license or registration for use on public streets, roads, or highways, only after 30 days after the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured. A vehicle may not be released if the Secretary gives written notice before the end of the 30-day period that the Secretary will inspect the vehicle under subsection (c) of this section.

(2) The Secretaries of Transportation and the Treasury shall prescribe regulations—

(A) ensuring the release of a motor vehicle and bond required under section 30141(d) of this title at the end of the 30-day period, unless the Secretary of Transportation issues a notice of an inspection under subsection (c) of this section; and

1 (B) providing that the Secretary of Transportation shall release the  
 2 vehicle and bond promptly after an inspection under subsection (c) of  
 3 this section showing compliance with the standards applicable to the ve-  
 4 hicle.

5 (3) Each registered importer shall include on each motor vehicle released  
 6 under this subsection a label prescribed by the Secretary of Transportation  
 7 identifying the importer and stating that the vehicle has been altered by the  
 8 importer to comply with the standards applicable to the vehicle.

9 (b) RELIANCE ON MANUFACTURER'S CERTIFICATION.—In making a cer-  
 10 tification under subsection (a)(1) of this section, the registered importer  
 11 may rely on the manufacturer's certification for the model to which the  
 12 motor vehicle involved is substantially similar if the importer certifies that  
 13 any alteration made by the importer did not affect the compliance of the  
 14 safety features of the vehicle and the importer keeps records verifying the  
 15 certification for the period the Secretary of Transportation prescribes.

16 (c) EVIDENCE OF COMPLIANCE.—(1) The Secretary of Transportation  
 17 may require that the certification under subsection (a)(1) of this section be  
 18 accompanied by evidence of compliance the Secretary considers appropriate  
 19 or may inspect the certified motor vehicle, or both. If the Secretary gives  
 20 notice of an inspection, an importer may release the vehicle only after—

21 (A) an inspection showing the motor vehicle complies with applicable  
 22 motor vehicle safety standards prescribed under this chapter for which  
 23 the inspection was made; and

24 (B) release of the vehicle by the Secretary.

25 (2) The Secretary of Transportation shall inspect periodically a represent-  
 26 ative number of motor vehicles for which certifications have been filed under  
 27 subsection (a)(1) of this section. In carrying out a motor vehicle testing pro-  
 28 gram under this chapter, the Secretary shall include a representative num-  
 29 ber of motor vehicles for which certifications have been filed under sub-  
 30 section (a)(1).

31 (d) CHALLENGING THE CERTIFICATION.—A motor vehicle or bond may  
 32 not be released under subsection (a) of this section if the Secretary of  
 33 Transportation, not later than 30 days after receiving a certification under  
 34 subsection (a)(1) of this section, gives written notice that the Secretary be-  
 35 lieves or has reason to believe that the certification is false or contains a  
 36 misrepresentation. The vehicle and bond may be released only after the Sec-  
 37 retary is satisfied with the certification and any modification of the certifi-  
 38 cation.

39 (e) BOND RELEASE.—A release of a bond required under section  
 40 30141(d) of this title is deemed an acceptance of a certification or comple-  
 41 tion of an inspection under this section but is not a decision by the Sec-

retary of Transportation under section 30118(a) or (b) of this title of compliance with applicable motor vehicle safety standards prescribed under this chapter.

**§ 30147. Responsibility for defects and noncompliance**

(a) DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND IMPORTER AS MANUFACTURER.—(1) In carrying out sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) for a defect or noncompliance with an applicable motor vehicle safety standard prescribed under this chapter for a motor vehicle originally manufactured for import into the United States, an imported motor vehicle having a valid certification under section 30146(a)(1) of this title and decided to be substantially similar to that motor vehicle shall be deemed as having the same defect or as not complying with the same standard unless the manufacturer or importer registered under section 30141(c) of this title demonstrates otherwise to the Secretary of Transportation; and

(B) the registered importer shall be deemed to be the manufacturer of any motor vehicle that the importer imports or brings into compliance with the standards for an individual under section 30142 of this title.

(2) The Secretary shall publish in the Federal Register notice of any defect or noncompliance under paragraph (1)(A) of this subsection.

(b) FINANCIAL RESPONSIBILITY REQUIREMENT.—The Secretary shall require by regulation each registered importer (including any successor in interest) to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under sections 30117(b), 30118–30121, and 30166(f) of this title.

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

**§ 30161. Judicial review of standards**

(a) FILING AND VENUE.—A person adversely affected by an order prescribing a motor vehicle safety standard under this chapter may apply for review of the order by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 59 days after the order is issued.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the order was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence

1 in rebuttal if the court is satisfied that the additional evidence is material  
 2 and there were reasonable grounds for not presenting the evidence in the  
 3 proceeding before the Secretary.

4 (2) The Secretary may modify findings of fact or make new findings be-  
 5 cause of the additional evidence presented. The Secretary shall file a modi-  
 6 fied or new finding, a recommendation to modify or set aside the order, and  
 7 the additional evidence with the court.

8 (d) CERTIFIED COPIES OF RECORDS OF PROCEEDINGS.—The Secretary  
 9 shall give any interested person a certified copy of the transcript of the  
 10 record in a proceeding under this section on request and payment of costs.  
 11 A certified copy of the record of the proceeding is admissible in a proceeding  
 12 arising out of a matter under this chapter, regardless of whether the pro-  
 13 ceeding under this section has begun or becomes final.

14 (e) FINALITY OF JUDGMENT AND SUPREME COURT REVIEW.—A judg-  
 15 ment of a court under this section is final and may be reviewed only by  
 16 the Supreme Court under section 1254 of title 28.

17 **§ 30162. Petitions by interested persons for standards and**  
 18 **enforcement**

19 (a) FILING.—Any interested person may file a petition with the Secretary  
 20 of Transportation requesting the Secretary to begin a proceeding—

21 (1) to prescribe a motor vehicle safety standard under this chapter;

22 or

23 (2) to decide whether to issue an order under section 30118(b) of  
 24 this title.

25 (b) STATEMENT OF FACTS.—The petition must state facts that the per-  
 26 son claims establish that a motor vehicle safety standard or order referred  
 27 to in subsection (a) of this section is necessary and briefly describe the  
 28 order the Secretary should issue.

29 (c) PROCEEDINGS.—The Secretary may hold a public hearing or conduct  
 30 an investigation or proceeding to decide whether to grant the petition.

31 (d) ACTIONS OF SECRETARY.—The Secretary shall grant or deny a peti-  
 32 tion not later than 120 days after the petition is filed. If a petition is grant-  
 33 ed, the Secretary shall begin the proceeding promptly. If a petition is de-  
 34 nied, the Secretary shall publish the reasons for the denial in the Federal  
 35 Register.

36 **§ 30163. Actions by the Attorney General**

37 (a) CIVIL ACTIONS TO ENFORCE.—The Attorney General may bring a  
 38 civil action in a United States district court to enjoin—

39 (1) a violation of this chapter or a regulation prescribed or order is-  
 40 sued under this chapter; and

(2) the sale, offer for sale, or introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of a motor vehicle or motor vehicle equipment for which it is decided, before the first purchase in good faith other than for resale, that the vehicle or equipment—

(A) contains a defect related to motor vehicle safety about which notice was given under section 30118(c) of this title or an order was issued under section 30118(b) of this title; or

(B) does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(b) PRIOR NOTICE.—When practicable, the Secretary of Transportation shall notify a person against whom a civil action under subsection (a) of this section is planned, give the person an opportunity to present that person's views, and, except for a knowing and willful violation of this chapter, give the person a reasonable opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter. Failure to give notice and an opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter does not prevent a court from granting appropriate relief.

(c) VENUE.—Except as provided in section 30121(d) of this title, a civil action under this section or section 30165(a) of this title may be brought in the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (a) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

#### **§ 30164. Service of process**

(a) DESIGNATING AGENTS.—A manufacturer offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made. The designation shall be in writing and filed with the Secretary of Transportation. The designation may be changed in the same way as originally made.

(b) SERVICE.—An agent may be served at the agent's office or usual place of residence. Service on the agent is deemed to be service on the man-

1 ufacturer. If a manufacturer does not designate an agent, service may be  
2 made by posting the notice or process in the office of the Secretary.

3 **§ 30165. Civil penalty**

4 (a) PENALTY.—A person that violates section 30112, 30115, 30117–  
5 30122, 30123(d), 30125(c), 30127, 30141–30147, or 30166 of this title or  
6 a regulation prescribed under those sections is liable to the United States  
7 Government for a civil penalty of not more than \$1,000 for each violation.  
8 A separate violation occurs for each motor vehicle or item of motor vehicle  
9 equipment and for each failure or refusal to allow or perform an act re-  
10 quired by those sections. The maximum penalty under this subsection for  
11 a related series of violations is \$800,000.

12 (b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation  
13 may compromise the amount of a civil penalty imposed under this section.

14 (2) The Government may deduct the amount of a civil penalty imposed  
15 or compromised under this section from amounts it owes the person liable  
16 for the penalty.

17 (c) CONSIDERATIONS.—In determining the amount of a civil penalty or  
18 compromise, the appropriateness of the penalty or compromise to the size  
19 of the business of the person charged and the gravity of the violation shall  
20 be considered.

21 (d) SUBPENAS FOR WITNESSES.—In a civil action brought under this sec-  
22 tion, a subpoena for a witness may be served in any judicial district.

23 **§ 30166. Inspections, investigations, and records**

24 (a) DEFINITION.—In this section, “motor vehicle accident” means an oc-  
25 currence associated with the maintenance or operation of a motor vehicle  
26 or motor vehicle equipment resulting in personal injury, death, or property  
27 damage.

28 (b) AUTHORITY TO INSPECT AND INVESTIGATE.—(1) The Secretary of  
29 Transportation may conduct an inspection or investigation—

30 (A) that may be necessary to enforce this chapter or a regulation  
31 prescribed or order issued under this chapter; or

32 (B) related to a motor vehicle accident and designed to carry out this  
33 chapter.

34 (2) The Secretary of Transportation shall cooperate with State and local  
35 officials to the greatest extent possible in an inspection or investigation  
36 under paragraph (1)(B) of this subsection.

37 (c) MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.—In carry-  
38 ing out this chapter, an officer or employee designated by the Secretary of  
39 Transportation—

40 (1) at reasonable times, may inspect and copy any record related to  
41 this chapter;



(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter; and

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) enter and inspect with reasonable promptness premises in which a motor vehicle or motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce;

(B) enter and inspect with reasonable promptness premises at which a vehicle or equipment involved in a motor vehicle accident is located;

(C) inspect with reasonable promptness that vehicle or equipment; and

(D) impound for not more than 72 hours a vehicle or equipment involved in a motor vehicle accident.

(d) REASONABLE COMPENSATION.—When a motor vehicle (except a vehicle subject to subchapter II of chapter 105 of this title) or motor vehicle equipment is inspected or temporarily impounded under subsection (c)(3) of this section, the Secretary of Transportation shall pay reasonable compensation to the owner of the vehicle if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle.

(e) RECORDS AND MAKING REPORTS.—The Secretary of Transportation reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) of this title or a regulation prescribed or order issued under subsection (f) or section 30117(b).

(f) PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NON-COMPLIANCE.—A manufacturer shall give the Secretary of Transportation a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.

(g) ADMINISTRATIVE AUTHORITY ON REPORTS, ANSWERS, AND HEARINGS.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) require, by general or special order, any person to file reports or answers to specific questions, including reports or answers under oath; and

(B) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(h) CIVIL ACTIONS TO ENFORCE AND VENUE.—A civil action to enforce a subpoena or order under subsection (g) of this section may be brought in the United States district court for the judicial district in which the proceeding is conducted. The court may punish a failure to obey an order of the court to comply with a subpoena or order as a contempt of court.

(i) GOVERNMENTAL COOPERATION.—The Secretary of Transportation may request a department, agency, or instrumentality of the United States Government to provide records the Secretary considers necessary to carry out this chapter. The head of the department, agency, or instrumentality shall provide the record on request, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary. This subsection does not affect a law limiting the authority of a department, agency, or instrumentality to provide information to another department, agency, or instrumentality.

(j) COOPERATION OF SECRETARY.—The Secretary of Transportation may advise, assist, and cooperate with departments, agencies, and instrumentalities of the Government, States, and other public and private agencies in developing a method for inspecting and testing to determine compliance with a motor vehicle safety standard.

(k) PROVIDING INFORMATION.—The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter or a regulation prescribed or order issued under this chapter.

### **§ 30167. Disclosure of information by the Secretary of Transportation**

(a) CONFIDENTIALITY OF INFORMATION.—Information obtained under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only in the following ways:

(1) to other officers and employees carrying out this chapter.

(2) when relevant to a proceeding under this chapter.

(3) to the public if the confidentiality of the information is preserved.

(4) to the public when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101 of this title.

(b) DEFECT AND NONCOMPLIANCE INFORMATION.—Subject to subsection (a) of this section, the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118–30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5.

(c) INFORMATION ABOUT MANUFACTURER’S INCREASED COSTS.—A manufacturer opposing an action of the Secretary under this chapter because of increased cost shall submit to the Secretary information about the increased cost, including the manufacturer’s cost and the cost to retail purchasers, that allows the public and the Secretary to evaluate the manufacturer’s statement. The Secretary shall evaluate the information promptly and, subject to subsection (a) of this section, shall make the information and evaluation available to the public. The Secretary shall publish a notice in the Federal Register that the information is available.

(d) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

### **§ 30168. Research, testing, development, and training**

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation shall conduct research, testing, development, and training necessary to carry out this chapter. The research, development, testing, and training shall include—

(A) collecting information to determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and—

(i) accidents involving motor vehicles; and

(ii) the occurrence of death or personal injury resulting from those accidents;

(B) obtaining experimental and other motor vehicles and motor vehicle equipment for research or testing; and

(C) selling or otherwise disposing of test motor vehicles and motor vehicle equipment and crediting the proceeds to current appropriations available to carry out this chapter.

(2) The Secretary may carry out this subsection through grants to States, interstate authorities, and nonprofit institutions.

(b) USE OF PUBLIC AGENCIES.—In carrying out this chapter, the Secretary shall use the services, research, and testing facilities of public agencies to the maximum extent practicable to avoid duplication.

(c) FACILITIES.—The Secretary may plan, design, and build a new facility or modify an existing facility to conduct research, development, and testing in traffic safety, highway safety, and motor vehicle safety. An expenditure of more than \$100,000 for planning, design, or construction may be made only if the planning, design, or construction is approved by substantially similar resolutions by the Committees on Energy and Commerce and Public Works and Transportation of the House of Representatives and the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate. To obtain that approval, the Secretary shall submit to Congress a prospectus on the proposed facility. The prospectus shall include—

- (1) a brief description of the facility being planned, designed, or built;
- (2) the location of the facility;
- (3) an estimate of the maximum cost of the facility;
- (4) a statement identifying private and public agencies that will use the facility and the contribution each agency will make to the cost of the facility; and
- (5) a justification of the need for the facility.

(d) INCREASING COSTS OF APPROVED FACILITIES.—The estimated maximum cost of a facility approved under subsection (c) of this section may be increased by an amount equal to the percentage increase in construction costs from the date the prospectus is submitted to Congress. However, the increase in the cost of the facility may not be more than 10 percent of the estimated maximum cost included in the prospectus. The Secretary shall decide what increase in construction costs has occurred.

(e) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.—When the United States Government makes more than a minimal contribution to a research or development activity under this chapter, the Secretary shall include in the arrangement for the activity a provision to ensure that all information, patents, and developments related to the activity are available to the public. However, the owner of a background patent may not be deprived of a right under the patent.

### **§ 30169. Annual reports**

(a) GENERAL REPORT.—The Secretary of Transportation shall submit to the President to submit to Congress on July 1 of each year a report on the administration of this chapter for the prior calendar year. The report shall include—

- 1 (1) a thorough statistical compilation of accidents and injuries;
- 2 (2) motor vehicle safety standards in effect or prescribed under this
- 3 chapter;
- 4 (3) the degree of observance of the standards;
- 5 (4) a summary of current research grants and contracts and a de-
- 6 scription of the problems to be considered under those grants and con-
- 7 tracts;
- 8 (5) an analysis and evaluation of research activities completed and
- 9 technological progress achieved;
- 10 (6) enforcement actions;
- 11 (7) the extent to which technical information was given the scientific
- 12 community and consumer-oriented information was made available to
- 13 the public; and
- 14 (8) recommendations for legislation needed to promote cooperation
- 15 among the States in improving traffic safety and strengthening the na-
- 16 tional traffic safety program.
- 17 (b) REPORT ON IMPORTING MOTOR VEHICLES.—Not later than 18
- 18 months after regulations are first prescribed under section 2(e)(1)(B) of the
- 19 Imported Vehicle Safety Compliance Act of 1988, the Secretary shall submit
- 20 to Congress a report of the actions taken to carry out subchapter III of
- 21 this chapter and the effectiveness of those actions, including any testing by
- 22 the Secretary under section 30146(c)(2) of this title. After the first report,
- 23 the Secretary shall submit a report to Congress under this subsection not
- 24 later than July 31 of each year.

## 25 **CHAPTER 303—NATIONAL DRIVER REGISTER**

Sec.

- 30301. Definitions.
- 30302. National Driver Register.
- 30303. State participation.
- 30304. Reports by chief driver licensing officials.
- 30305. Access to Register information.
- 30306. National Driver Register Advisory Committee.
- 30307. Criminal penalties.
- 30308. Authorization of appropriations.

### 26 **§ 30301. Definitions**

27 In this chapter—

- 28 (1) “alcohol” has the same meaning given that term in regulations
- 29 prescribed by the Secretary of Transportation.
- 30 (2) “chief driver licensing official” means the official in a State who
- 31 is authorized to—
- 32 (A) maintain a record about a motor vehicle operator’s license
- 33 issued by the State; and
- 34 (B) issue, deny, revoke, suspend, or cancel a motor vehicle oper-
- 35 ator’s license issued by the State.

(3) “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(4) “motor vehicle” means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line.

(5) “motor vehicle operator’s license” means a license issued by a State authorizing an individual to operate a motor vehicle on public streets, roads, or highways.

(6) “participating State” means a State that has notified the Secretary under section 30303 of this title of its participation in the National Driver Register.

(7) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(8) “State of record” means a State that has given the Secretary a report under section 30304 of this title about an individual who is the subject of a request for information made under section 30305 of this title.

#### **§ 30302. National Driver Register**

(a) ESTABLISHMENT AND CONTENTS.—The Secretary of Transportation shall establish as soon as practicable and maintain a National Driver Register to assist chief driver licensing officials of participating States in exchanging information about the motor vehicle driving records of individuals. The Register shall contain an index of the information reported to the Secretary under section 30304 of this title. The Register shall enable the Secretary (electronically or, until all States can participate electronically, by United States mail)—

(1) to receive information submitted under section 30304 of this title by the chief driver licensing official of a State of record;

(2) to receive a request for information made by the chief driver licensing official of a participating State under section 30305 of this title;

(3) to refer the request to the chief driver licensing official of a State of record; and

(4) in response to the request, to relay information provided by a chief driver licensing official of a State of record to the chief driver licensing official of a participating State, without interception of the information.

(b) ACCURACY OF INFORMATION.—The Secretary is not responsible for the accuracy of information relayed to the chief driver licensing official of a participating State. However, the Secretary shall maintain the Register in a way that ensures against inadvertent alteration of information during a relay.

(c) TRANSITION FROM PRIOR REGISTER.—(1) The Secretary shall provide by regulation for the orderly transition from the register maintained under the Act of July 14, 1960 (Public Law 86-660, 74 Stat. 526), as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), to the Register maintained under this chapter.

(2)(A) The Secretary shall delete from the Register a report or information that was compiled under the Act of July 14, 1960 (Public Law 86-660, 74 Stat. 526), as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), and transferred to the Register, after the earlier of—

(i) the date the State of record removes it from the State's file;

(ii) 7 years after the date the report or information is entered in the Register; or

(iii) the date a fully electronic Register system is established.

(B) The report or information shall be disposed of under chapter 33 of title 44.

(3) If the chief driver licensing official of a participating State finds that information provided for inclusion in the Register is erroneous or is related to a conviction of a traffic offense that subsequently is reversed, the official immediately shall notify the Secretary. The Secretary shall provide for the immediate deletion of the information from the Register.

(d) ASSIGNMENT OF PERSONNEL.—In carrying out this chapter, the Secretary shall assign personnel necessary to ensure the effective operation of the Register.

### **§ 30303. State participation**

(a) NOTIFICATION.—A State may become a participating State under this chapter by notifying the Secretary of Transportation of its intention to be bound by section 30304 of this title.

(b) WITHDRAWAL.—A participating State may end its status as a participating State by notifying the Secretary of its withdrawal from participation in the National Driver Register.

(c) FORM AND WAY OF NOTIFICATION.—Notification by a State under this section shall be made in the form and way the Secretary prescribes by regulation.

**§ 30304. Reports by chief driver licensing officials**

(a) INDIVIDUALS COVERED.—As soon as practicable, the chief driver licensing official of each participating State shall submit to the Secretary of Transportation a report containing the information specified by subsection

(b) of this section for each individual—

(1) who is denied a motor vehicle operator's license by that State for cause;

(2) whose motor vehicle operator's license is revoked, suspended, or canceled by that State for cause; or

(3) who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses:

(A) operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

(C) failing to give aid or provide identification when involved in an accident resulting in death or personal injury.

(D) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle.

(b) CONTENTS.—(1) Except as provided in paragraph (2) of this subsection, a report under subsection (a) of this section shall contain—

(A) the individual's legal name, date of birth, sex, and, at the Secretary's discretion, height, weight, and eye and hair color;

(B) the name of the State providing the information; and

(C) the social security account number if used by the State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number if different from the social security account number.

(2) A report under subsection (a) of this section about an event that occurs during the 2-year period before the State becomes a participating State is sufficient if the report contains all of the information that is available to the chief driver licensing official when the State becomes a participating State.

(c) TIME FOR FILING.—If a report under subsection (a) of this section is about an event that occurs—

(1) during the 2-year period before the State becomes a participating State, the report shall be submitted not later than 6 months after the State becomes a participating State; or

(2) after the State becomes a participating State, the report shall be submitted not later than 31 days after the motor vehicle department



1 of the State receives any information specified in subsection (b)(1) of  
2 this section that is the subject of the report.

3 (d) EVENTS OCCURRING BEFORE PARTICIPATION.—This section does not  
4 require a State to report information about an event that occurs before the  
5 2-year period before the State becomes a participating State.

6 **§ 30305. Access to Register information**

7 (a) REFERRALS OF INFORMATION REQUESTS.—(1) To carry out duties  
8 related to driver licensing, driver improvement, or transportation safety, the  
9 chief driver licensing official of a participating State may request the Sec-  
10 retary of Transportation to refer, electronically or by United States mail,  
11 a request for information about the motor vehicle driving record of an indi-  
12 vidual to the chief driver licensing official of a State of record.

13 (2) The Secretary of Transportation shall relay, electronically or by Unit-  
14 ed States mail, information received from the chief driver licensing official  
15 of a State of record in response to a request under paragraph (1) of this  
16 subsection to the chief driver licensing official of the participating State re-  
17 questing the information. However, the Secretary may refuse to relay infor-  
18 mation to the chief driver licensing official of a participating State that does  
19 not comply with section 30304 of this title.

20 (b) REQUESTS TO OBTAIN INFORMATION.—(1) The Chairman of the Na-  
21 tional Transportation Safety Board and the Administrator of the Federal  
22 Highway Administration may request the chief driver licensing official of a  
23 State to obtain information under subsection (a) of this section about an  
24 individual who is the subject of an accident investigation conducted by the  
25 Board or the Administrator. The Chairman and the Administrator may re-  
26 ceive the information.

27 (2) An individual who is employed, or is seeking employment, as a driver  
28 of a motor vehicle may request the chief driver licensing official of the State  
29 in which the individual is employed or seeks employment to provide informa-  
30 tion under subsection (a) of this section to the individual's employer or pro-  
31 spective employer. An employer or prospective employer may receive the in-  
32 formation and shall make the information available to the individual. Infor-  
33 mation may not be obtained from the National Driver Register under this  
34 paragraph if the information was entered in the Register more than 3 years  
35 before the request.

36 (3) An individual who has received, or is applying for, an airman's certi-  
37 ficate may request the chief driver licensing official of a State to provide in-  
38 formation under subsection (a) of this section about the individual to the  
39 Administrator of the Federal Aviation Administration. The Administrator  
40 may receive the information and shall make the information available to the  
41 individual for review and written comment. The Administrator may use the

1 information to verify information required to be reported to the Adminis-  
2 trator by an airman applying for an airman medical certificate and to evalu-  
3 ate whether the airman meets the minimum standards prescribed by the Ad-  
4 ministrator to be issued an airman medical certificate. The Administrator  
5 may not otherwise divulge or use the information. Information may not be  
6 obtained from the Register under this paragraph if the information was en-  
7 tered in the Register more than 3 years before the request, unless the infor-  
8 mation is about a revocation or suspension still in effect on the date of the  
9 request.

10 (4) An individual who is employed, or is seeking employment, by a rail  
11 carrier as an operator of a locomotive may request the chief driver licensing  
12 official of a State to provide information under subsection (a) of this section  
13 to the individual's employer or prospective employer or to the Secretary of  
14 Transportation. Information may not be obtained from the Register under  
15 this paragraph if the information was entered in the Register more than 3  
16 years before the request, unless the information is about a revocation or  
17 suspension still in effect on the date of the request.

18 (5) An individual who holds, or is applying for, a license or certificate  
19 of registry under section 7101 of title 46, or a merchant mariner's docu-  
20 ment under section 7302 of title 46, may request the chief driver licensing  
21 official of a State to provide information under subsection (a) of this section  
22 about the individual to the Secretary of the department in which the Coast  
23 Guard is operating. The Secretary may receive the information and shall  
24 make the information available to the individual for review and written com-  
25 ment before denying, suspending, or revoking the license, certificate, or docu-  
26 ment of the individual based on the information and before using the infor-  
27 mation in an action taken under chapter 77 of title 46. The Secretary may  
28 not otherwise divulge or use the information, except for purposes of section  
29 7101, 7302, or 7703 of title 46. Information may not be obtained from the  
30 Register under this paragraph if the information was entered in the Reg-  
31 ister more than 3 years before the request, unless the information is about  
32 a revocation or suspension still in effect on the date of the request.

33 (6) An individual may request the chief driver licensing official of a State  
34 to obtain information about the individual under subsection (a) of this sec-  
35 tion—

36 (A) to learn whether information about the individual is being pro-  
37 vided;

38 (B) to verify the accuracy of the information; or

39 (C) to obtain a certified copy of the information.

40 (7) A request under this subsection shall be made in the form and way  
41 the Secretary of Transportation prescribes by regulation.

(c) RELATIONSHIP TO OTHER LAWS.—A request for, or receipt of, information from the Register is subject to sections 552 and 552a of title 5, and other applicable laws of the United States or a State, except that—

(1) the Secretary of Transportation may not relay or otherwise provide information specified in section 30304(b)(1)(A) or (C) of this title to a person not authorized by this section to receive the information;

(2) a request for, or receipt of, information by a chief driver licensing official, or by a person authorized by subsection (b) of this section to request and receive the information, is deemed to be a routine use under section 552a(b) of title 5; and

(3) receipt of information by a person authorized by this section to receive the information is deemed to be a disclosure under section 552a(c) of title 5, except that the Secretary of Transportation is not required to retain the accounting made under section 552a(c)(1) for more than 7 years after the disclosure.

(d) AVAILABILITY OF INFORMATION PROVIDED UNDER PRIOR LAW.—Information provided by a State under the Act of July 14, 1960 (Public Law 86–660, 74 Stat. 526), as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), and under this chapter, shall be available under this section during the transition from the register maintained under that Act to the Register maintained under this chapter.

### **§ 30306. National Driver Register Advisory Committee**

(a) ORGANIZATION.—There is a National Driver Register Advisory Committee.

(b) DUTIES.—The Committee shall advise the Secretary of Transportation on—

(1) the efficiency of the maintenance and operation of the National Driver Register; and

(2) the effectiveness of the Register in assisting States in exchanging information about motor vehicle driving records.

(c) COMPOSITION AND APPOINTMENT.—The Committee is composed of 15 members appointed by the Secretary as follows:

(1) 3 members appointed from among individuals who are specially qualified to serve on the Committee because of their education, training, or experience, and who are not officers or employees of the United States Government or a State.

(2) 3 members appointed from among groups outside the Government that represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations.

1 (3) 9 members, geographically representative of the participating  
 2 States, appointed from among individuals who are chief driver licensing  
 3 officials of participating States.

4 (d) TERMS.—(1) Except as provided in paragraph (2) of this subsection,  
 5 the term of each member is 3 years.

6 (2) A vacancy on the Committee shall be filled in the same way as an  
 7 original appointment. A member appointed to fill a vacancy serves for the  
 8 remainder of the term of that member's predecessor. After a member's term  
 9 ends, the member may continue to serve until the successor takes office.

10 (e) COMPENSATION AND EXPENSES.—Members of the Committee serve  
 11 without compensation. However, the Secretary may reimburse a member for  
 12 reasonable travel expenses incurred by the member in attending meetings  
 13 of the Committee.

14 (f) MEETINGS, CHAIRMAN, VICE CHAIRMAN, AND QUORUM.—(1) The  
 15 Committee shall meet at least once a year.

16 (2) The Committee shall elect a Chairman and a Vice Chairman from  
 17 among its members.

18 (3) Eight members are a quorum.

19 (4) The Committee shall meet at the call of the Chairman or a majority  
 20 of the members.

21 (g) PERSONNEL AND SERVICES.—The Secretary may provide the Com-  
 22 mittee with personnel, penalty mail privileges, and similar services the Sec-  
 23 retary considers necessary to assist the Committee in carrying out its duties  
 24 and powers under this section.

25 (h) REPORTS.—At least once a year, the Committee shall submit to the  
 26 Secretary a report on the matters specified in subsection (b) of this section.  
 27 The report shall include any recommendations of the Committee for changes  
 28 in the Register.

29 (i) RELATIONSHIP TO OTHER LAWS.—The Committee is exempt from  
 30 sections 10(e) and (f) and 14 of the Federal Advisory Committee Act (5  
 31 App. U.S.C.).

### 32 **§ 30307. Criminal penalties**

33 (a) GENERAL PENALTY.—A person (except an individual described in sec-  
 34 tion 30305(b)(6) of this title) shall be fined under title 18, imprisoned for  
 35 not more than one year, or both, if—

36 (1) the person receives under section 30305 of this title information  
 37 specified in section 30304(b)(1)(A) or (C) of this title;

38 (2) disclosure of the information is not authorized by section 30305  
 39 of this title; and

40 (3) the person willfully discloses the information knowing that disclo-  
 41 sure is not authorized.

(b) INFORMATION PENALTY.—A person knowingly and willfully requesting, or under false pretenses obtaining, information specified in section 30304(b)(1)(A) or (C) of this title from a person receiving the information under section 30305 of this title shall be fined under title 18, imprisoned for not more than one year, or both.

### **§ 30308. Authorization of appropriations**

(a) GENERAL.—The Secretary of Transportation shall make available from amounts made available to carry out section 402 of title 23 \$4,000,000 for each of the fiscal years ending September 30, 1993, and September 30, 1994, to carry out this chapter.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

## **CHAPTER 305—NATIONAL AUTOMOBILE TITLE INFORMATION SYSTEM**

Sec.

30501. Definitions.

30502. National Automobile Title Information System.

30503. State participation.

30504. Reporting requirements.

30505. Penalties and enforcement.

### **§ 30501. Definitions**

In this chapter—

(1) “automobile” has the same meaning given that term in section 32901(a) of this title.

(2) “certificate of title” means a document issued by a State showing ownership of an automobile.

(3) “insurance carrier” means an individual or entity engaged in the business of underwriting automobile insurance.

(4) “junk automobile” means an automobile that—

(A) is incapable of operating on public streets, roads, and highways; and

(B) has no value except as a source of parts or scrap.

(5) “junk yard” means an individual or entity engaged in the business of acquiring or owning junk automobiles for—

(A) resale in their entirety or as spare parts; or

(B) rebuilding, restoration, or crushing.

(6) “operator” means the individual or entity authorized or designated as the operator of the National Automobile Title Information System under section 30502(b) of this title, or the Secretary of Transportation, if there is no authorized or designated individual or entity.

(7) “salvage automobile” means an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent

that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage.

(8) “salvage yard” means an individual or entity engaged in the business of acquiring or owning salvage automobiles for—

(A) resale in their entirety or as spare parts; or

(B) rebuilding, restoration, or crushing.

(9) “State” means a State of the United States or the District of Columbia.

### **§ 30502. National Automobile Title Information System**

(a) ESTABLISHMENT OR DESIGNATION.—(1) In cooperation with the States and not later than January 31, 1996, the Secretary of Transportation shall establish a National Automobile Title Information System that will provide individuals and entities referred to in subsection (e) of this section with instant and reliable access to information maintained by the States related to automobile titling described in subsection (d) of this section. However, if the Secretary decides that the existing information system meets the requirements of subsections (d) and (e) of this section and will permit the Secretary to carry out this chapter as early as possible, the Secretary, in consultation with the Attorney General, may designate an existing information system as the National Automobile Title Information System.

(2) In cooperation with the Attorney General and the States, the Secretary shall ascertain the extent to which title and related information to be included in the system established under paragraph (1) of this subsection will be adequate, timely, reliable, uniform, and capable of assisting in efforts to prevent the introduction or reintroduction of stolen vehicles and parts into interstate commerce.

(b) OPERATION.—The Secretary may authorize the operation of the System established or designated under subsection (a)(1) of this section by agreement with one or more States, or by designating, after consulting with the States, a third party that represents the interests of the States.

(c) USER FEES.—Operation of the System established or designated under subsection (a)(1) of this section shall be paid for by user fees and should be self-sufficient and not be dependent on amounts from the United States Government. The amount of fees the operator collects and keeps under this subsection subject to annual appropriation laws, excluding fees the operator collects and pays to an entity providing information to the operator, may be not more than the costs of operating the System.

(d) INFORMATION REQUIREMENTS.—The System established or designated under subsection (a)(1) of this section shall permit a user of the System at least to establish instantly and reliably—

(1) the validity and status of a document purporting to be a certificate of title;

(2) whether an automobile bearing a known vehicle identification number is titled in a particular State;

(3) whether an automobile known to be titled in a particular State is or has been a junk automobile or a salvage automobile;

(4) for an automobile known to be titled in a particular State, the odometer mileage disclosure required under section 32705 of this title for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the State; and

(5) whether an automobile bearing a known vehicle identification number has been reported as a junk automobile or a salvage automobile under section 30504 of this title.

(e) AVAILABILITY OF INFORMATION.—(1) The operator shall make available—

(A) to a participating State on request of that State, information in the System about any automobile;

(B) to a Government, State, or local law enforcement official on request of that official, information in the System about a particular automobile, junk yard, or salvage yard;

(C) to a prospective purchaser of an automobile on request of that purchaser, including an auction company or entity engaged in the business of purchasing used automobiles, information in the System about that automobile; and

(D) to a prospective or current insurer of an automobile on request of that insurer, information in the System about that automobile.

(2) The operator may release only the information reasonably necessary to satisfy the requirements of paragraph (1) of this subsection. The operator may not collect an individual's social security account number or permit users of the System to obtain an individual's address or social security account number.

### **§ 30503. State participation**

(a) STATE INFORMATION.—Each State shall make titling information maintained by that State available for use in operating the National Automobile Title Information System established or designated under section 30502 of this title.

(b) VERIFICATION CHECKS.—Each State shall establish a practice of performing an instant title verification check before issuing a certificate of title to an individual or entity claiming to have purchased an automobile from an individual or entity in another State. The check shall consist of—

(1) communicating to the operator—

(A) the vehicle identification number of the automobile for which the certificate of title is sought;

(B) the name of the State that issued the most recent certificate of title for the automobile; and

(C) the name of the individual or entity to whom the certificate of title was issued; and

(2) giving the operator an opportunity to communicate to the participating State the results of a search of the information.

(c) GRANTS TO STATES.—(1) In cooperation with the States and not later than January 1, 1994, the Secretary of Transportation shall—

(A) conduct a review of systems used by the States to compile and maintain information about the titling of automobiles; and

(B) determine for each State the cost of making titling information maintained by that State available to the operator to meet the requirements of section 30502(d) of this title.

(2) The Secretary may make grants to participating States to be used in making titling information maintained by those States available to the operator if—

(A) the grant to a State is not more than the lesser of—

(i) 25 percent of the cost of making titling information maintained by that State available to the operator as determined by the Secretary under paragraph (1)(B) of this subsection; or

(ii) \$300,000; and

(B) the Secretary decides that the grants are reasonable and necessary to establish of the System.

(d) REPORT TO CONGRESS.—Not later than January 1, 1997, the Secretary shall report to Congress on which States have met the requirements of this section. If a State has not met the requirements, the Secretary shall describe the impediments that have resulted in the State's failure to meet the requirements.

#### **§ 30504. Reporting requirements**

(a) JUNK YARD AND SALVAGE YARD OPERATORS.—(1) Beginning at a time established by the Secretary of Transportation that is not sooner than the 3d month before the establishment or designation of the National Automobile Title Information System under section 30502 of this title, an individual or entity engaged in the business of operating a junk yard or salvage



yard shall file a monthly report with the operator of the System. The report shall contain an inventory of all junk automobiles or salvage automobiles obtained by the junk yard or salvage yard during the prior month. The inventory shall contain—

(A) the vehicle identification number of each automobile obtained;

(B) the date on which the automobile was obtained;

(C) the name of the individual or entity from whom the automobile was obtained; and

(D) a statement of whether the automobile was crushed or disposed of for sale or other purposes.

(2) Paragraph (1) of this subsection does not apply to an individual or entity—

(A) required by State law to report the acquisition of junk automobiles or salvage automobiles to State or local authorities if those authorities make that information available to the operator; or

(B) issued a verification under section 33110 of this title stating that the automobile or parts from the automobile are not reported as stolen.

(b) INSURANCE CARRIERS.—Beginning at a time established by the Secretary that is not sooner than the 3d month before the establishment or designation of the System, an individual or entity engaged in business as an insurance carrier shall file a monthly report with the operator. The report may be filed directly or through a designated agent. The report shall contain an inventory of all automobiles of the current model year or any of the 4 prior model years that the carrier, during the prior month, has obtained possession of and has decided are junk automobiles or salvage automobiles. The inventory shall contain—

(1) the vehicle identification number of each automobile obtained;

(2) the date on which the automobile was obtained;

(3) the name of the individual or entity from whom the automobile was obtained; and

(4) the name of the owner of the automobile at the time of the filing of the report.

(c) The Secretary shall establish by regulation procedures and practices to facilitate reporting in the least burdensome and costly fashion.

#### **§30505. Penalties and enforcement**

(a) PENALTY.—An individual or entity violating this chapter is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation.

(b) COLLECTION AND COMPROMISE.—(1) The Secretary of Transportation shall impose a civil penalty under this section. The Attorney General

shall bring a civil action to collect the penalty. The Secretary may compromise the amount of the penalty. In determining the amount of the penalty or compromise, the Secretary shall consider the appropriateness of the penalty to the size of the business of the individual or entity charged and the gravity of the violation.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the individual or entity liable for the penalty.

## PART B—COMMERCIAL

### CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

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- 31144. Safety fitness of owners and operators.
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- 31146. Relationship to other laws.
- 31147. Limitations on authority.

#### SUBCHAPTER IV—MISCELLANEOUS

- 31161. Procedures to ensure timely correction of safety violations.
- 31162. Compliance review priority.

#### SUBCHAPTER I—STATE GRANTS

##### § 31101. Definitions

In this subchapter—

- (1) “commercial motor vehicle” means (except in section 31106) a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle—

1 (A) has a gross vehicle weight rating of at least 10,000 pounds;

2 (B) is designed to transport more than 10 passengers including  
3 the driver; or

4 (C) is used in transporting material found by the Secretary of  
5 Transportation to be hazardous under section 5103 of this title.

6 (2) “employee” means a driver of a commercial motor vehicle (in-  
7 cluding an independent contractor when personally operating a com-  
8 mercial motor vehicle), a mechanic, a freight handler, or an individual  
9 not an employer, who—

10 (A) directly affects commercial motor vehicle safety in the  
11 course of employment by a commercial motor carrier; and

12 (B) is not an employee of the United States Government, a  
13 State, or a political subdivision of a State acting in the course of  
14 employment.

15 (3) “employer”—

16 (A) means a person engaged in a business affecting commerce  
17 that owns or leases a commercial motor vehicle in connection with  
18 that business, or assigns an employee to operate the vehicle in  
19 commerce; but

20 (B) does not include the Government, a State, or a political sub-  
21 division of a State.

22 (4) “State” means a State of the United States, the District of Co-  
23 lumbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and  
24 the Northern Mariana Islands.

## 25 **§ 31102. Grants to States**

26 (a) GENERAL AUTHORITY.—Subject to this section and the availability of  
27 amounts, the Secretary of Transportation may make grants to States for  
28 the development or implementation of programs for the enforcement of reg-  
29 ulations, standards, and orders of the United States Government on com-  
30 mercial motor vehicle safety and compatible State regulations, standards,  
31 and orders.

32 (b) STATE PLAN PROCEDURES AND CONTENTS.—(1) The Secretary shall  
33 prescribe procedures for a State to submit a plan under which the State  
34 agrees to adopt and assume responsibility for enforcing regulations, stand-  
35 ards, and orders of the Government on commercial motor vehicle safety or  
36 compatible State regulations, standards, and orders. The Secretary shall ap-  
37 prove the plan if the Secretary decides the plan is adequate to promote the  
38 objectives of this section and the plan—

39 (A) designates the State motor vehicle safety agency responsible for  
40 administering the plan throughout the State;

1 (B) contains satisfactory assurances the agency has or will have the  
2 legal authority, resources, and qualified personnel necessary to enforce  
3 the regulations, standards, and orders;

4 (C) contains satisfactory assurances the State will devote adequate  
5 amounts to the administration of the plan and enforcement of the regu-  
6 lations, standards, and orders;

7 (D) provides that the total expenditure of amounts of the State and  
8 its political subdivisions (not including amounts of the Government) for  
9 commercial motor vehicle safety programs for enforcement of commer-  
10 cial motor vehicle size and weight limitations, drug interdiction, and  
11 State traffic safety laws and regulations under subsection (c) of this  
12 section will be maintained at a level at least equal to the average level  
13 of that expenditure for its last 3 full fiscal years before December 18,  
14 1991;

15 (E) provides a right of entry and inspection to carry out the plan;

16 (F) provides that all reports required under this section be submitted  
17 to the agency and that the agency will make the reports available to  
18 the Secretary on request;

19 (G) provides that the agency will adopt the reporting requirements  
20 and use the forms for recordkeeping, inspections, and investigations the  
21 Secretary prescribes;

22 (H) requires registrants of commercial motor vehicles to make a dec-  
23 laration of knowledge of applicable safety regulations, standards, and  
24 orders of the Government and the State;

25 (I) provides that the State will grant maximum reciprocity for in-  
26 spections conducted under the North American Inspection Standard  
27 through the use of a nationally accepted system that allows ready iden-  
28 tification of previously inspected commercial motor vehicles;

29 (J) ensures that activities described in subsection (c) of this section,  
30 if financed with grants under subsection (a) of this section, will not di-  
31 minish the effectiveness of the development and implementation of com-  
32 mercial motor vehicle safety programs described in subsection (a);

33 (K) ensures that fines imposed and collected by the State for viola-  
34 tions of commercial motor vehicle safety regulations will be reasonable  
35 and appropriate and that, to the maximum extent practicable, the State  
36 will attempt to implement the recommended fine schedule published by  
37 the Commercial Vehicle Safety Alliance;

38 (L) ensures that the State agency will coordinate the plan prepared  
39 under this section with the State highway safety plan under section  
40 402 of title 23;

1 (M) ensures participation by the 48 contiguous States in  
2 SAFETYNET not later than January 1, 1994;

3 (N) provides satisfactory assurances that the State will undertake ef-  
4 forts that will emphasize and improve enforcement of State and local  
5 traffic safety laws and regulations related to commercial motor vehicle  
6 safety;

7 (O) provides satisfactory assurances that the State will promote ac-  
8 tivities—

9 (i) to remove impaired commercial motor vehicle drivers from  
10 the highways of the United States through adequate enforcement  
11 of regulations on the use of alcohol and controlled substances and  
12 by ensuring ready roadside access to alcohol detection and measur-  
13 ing equipment;

14 (ii) to provide an appropriate level of training to State motor  
15 carrier safety assistance program officers and employees on rec-  
16 ognizing drivers impaired by alcohol or controlled substances;

17 (iii) to promote enforcement of the requirements related to the  
18 licensing of commercial motor vehicle drivers, including checking  
19 the status of commercial drivers' licenses; and

20 (iv) to improve enforcement of hazardous material transpor-  
21 tation regulations by encouraging more inspections of shipper fa-  
22 cilities affecting highway transportation and more comprehensive  
23 inspection of the loads of commercial motor vehicles transporting  
24 hazardous material; and

25 (P) provides satisfactory assurances that the State will promote ef-  
26 fective—

27 (i) interdiction activities affecting the transportation of con-  
28 trolled substances by commercial motor vehicle drivers and train-  
29 ing on appropriate strategies for carrying out those interdiction  
30 activities; and

31 (ii) use of trained and qualified officers and employees of politi-  
32 cal subdivisions and local governments, under the supervision and  
33 direction of the State motor vehicle safety agency, in the enforce-  
34 ment of regulations affecting commercial motor vehicle safety and  
35 hazardous material transportation safety.

36 (2) If the Secretary disapproves a plan under this subsection, the Sec-  
37 retary shall give the State a written explanation and allow the State to mod-  
38 ify and resubmit the plan for approval.

39 (3) In estimating the average level of State expenditure under paragraph  
40 (1)(D) of this subsection, the Secretary—

(A) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

(B) shall require the State to exclude Government amounts and State matching amounts used to receive Government financing under subsection (a) of this section.

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

(1) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.

(2) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

(3) enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles.

(d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

### **§ 31103. United States Government's share of costs**

The Secretary of Transportation shall reimburse a State, from a grant made under this subchapter, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in developing and implementing programs to enforce commercial motor vehicle regulations, stand-

ards, or orders adopted under this subchapter or subchapter II of this chapter. In determining those costs, the Secretary shall include in-kind contributions by the State. Amounts of the State and its political subdivisions required to be expended under section 31102(b)(1)(D) of this title may not be included as part of the share not provided by the United States Government. The Secretary may allocate among the States whose applications for grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established.

**§31104. Availability of amounts**

(a) GENERAL.—Subject to section 9503(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(1)), the following amounts are available from the Highway Trust Fund (except the Mass Transit Account) for the Secretary of Transportation to incur obligations to carry out section 31102 of this title:

(1) not more than \$76,000,000 for the fiscal year ending September 30, 1993.

(2) not more than \$80,000,000 for the fiscal year ending September 30, 1994.

(3) not more than \$83,000,000 for the fiscal year ending September 30, 1995.

(4) not more than \$85,000,000 for the fiscal year ending September 30, 1996.

(5) not more than \$90,000,000 for the fiscal year ending September 30, 1997.

(b) AVAILABILITY AND REALLOCATION OF AMOUNTS.—(1) Amounts made available under subsection (a) of this section remain available until expended. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are released to the Secretary for reallocation.

(2) Amounts made available under section 404(a)(2) of the Surface Transportation Assistance Act of 1982 before October 1, 1991, that are not obligated on October 1, 1992, are available for reallocation and obligation under paragraph (1) of this subsection.

(c) REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.—Amounts made available under subsection (a) of this section shall be used to reimburse States proportionately for the United States Government's share of costs incurred.

(d) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under section 31102 of this title is a contractual obligation of the Government for payment of the Government's share of costs

1 incurred by the State in developing, implementing, or developing and imple-  
 2 menting programs to enforce commercial motor vehicle regulations, stand-  
 3 ards, and orders.

4 (e) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each  
 5 fiscal year or as soon after that date as practicable, the Secretary may de-  
 6 duct, from amounts made available under subsection (a) of this section for  
 7 that fiscal year, not more than 1.25 percent of those amounts for adminis-  
 8 trative expenses incurred in carrying out section 31102 of this title in that  
 9 fiscal year. The Secretary shall use at least 75 percent of those deducted  
 10 amounts to train non-Government employees and to develop related training  
 11 materials in carrying out section 31102.

12 (f) ALLOCATION CRITERIA.—On October 1 of each fiscal year or as soon  
 13 after that date as practicable, the Secretary, after making the deduction de-  
 14 scribed in subsection (e) of this section, shall allocate under criteria the Sec-  
 15 retary establishes the amounts available for that fiscal year among the  
 16 States with plans approved under section 31102 of this title. However, the  
 17 Secretary may designate specific eligible States among which to allocate  
 18 those amounts in allocating amounts available—

19 (1) for research, development, and demonstration under subsection

20 (g)(1)(F) of this section; and

21 (2) for public education under subsection (g)(1)(G) of this section.

22 (g) SPECIFIC ALLOCATIONS.—(1) Of amounts made available under sub-  
 23 section (a) of this section—

24 (A) for each fiscal year beginning after September 30, 1992, the  
 25 Secretary shall obligate at least \$1,500,000 to make grants to States  
 26 for training inspectors to enforce regulations prescribed by the Sec-  
 27 retary related to the transportation of hazardous material by commer-  
 28 cial motor vehicles;

29 (B) for each of the fiscal years ending September 30, 1993–1997,  
 30 the Secretary may obligate not more than \$2,000,000 to carry out sec-  
 31 tion 31106 of this title;

32 (C) for each of the fiscal years ending September 30, 1993–1997,  
 33 the Secretary may obligate not more than \$2,000,000 to carry out sec-  
 34 tion 31107 of this title;

35 (D) for each of the fiscal years ending September 30, 1993–1995,  
 36 the Secretary shall obligate at least \$4,250,000, and for each of the  
 37 fiscal years ending September 30, 1996, and 1997, the Secretary shall  
 38 obligate at least \$5,000,000, for traffic enforcement activities related  
 39 to commercial motor vehicle drivers that are carried out in conjunction  
 40 with an appropriate inspection of a commercial motor vehicle for com-



pliance with Government or State commercial motor vehicle safety regulations;

(E) for each of the fiscal years ending September 30, 1993–1995, the Secretary shall obligate at least \$1,000,000 to increase enforcement of the licensing requirements of chapter 313 of this title by motor carrier safety assistance program officers and employees, including the cost of purchasing equipment for, and conducting, inspections to check the current status of licenses issued under chapter 313;

(F) for each fiscal year, the Secretary shall obligate at least \$500,000 for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to carry out section 31102 of this title and that are beneficial to all jurisdictions; and

(G) for each fiscal year, the Secretary shall obligate at least \$350,000 to educate the motoring public on how to share the road safely with commercial motor vehicles.

(2) The Secretary shall announce publicly amounts obligated under paragraph (1)(F) of this subsection and award those amounts competitively, when practicable, to any eligible State for up to 100 percent of the State costs or to other persons as the Secretary decides.

(3) In carrying out educational activities referred to in paragraph (1)(G) of this subsection, the Secretary shall consult with appropriate industry representatives.

(h) PAYMENT TO STATES FOR COSTS.—Each State shall submit vouchers for costs the State incurs under this section and section 31102 of this title. The Secretary shall pay the State an amount not more than the Government share of costs incurred as of the date of the vouchers.

(i) IMPROVED ALLOCATION FORMULA.—The Secretary shall prescribe regulations to develop an improved formula and process for allocating amounts made available for grants under section 31102(a) of this title among States eligible for those amounts. In prescribing those regulations, the Secretary shall—

(1) consider ways to provide incentives to States that demonstrate innovative, successful, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous material transportation safety;

(2) place special emphasis on incentives to States that conduct traffic safety enforcement activities that are coupled with motor carrier safety inspections; and

(3) consider ways to provide incentives to States that increase compatibility of State commercial motor vehicle safety and hazardous mate-

rial transportation regulations with Government safety regulations and promote other factors intended to promote effectiveness and efficiency the Secretary decides are appropriate.

(j) INTRASTATE COMPATIBILITY.—The Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to be enforced under section 31102(a) of this title. To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, the Secretary shall ensure that the guidelines and standards are applied uniformly.

### **§ 31105. Employee protections**

(a) PROHIBITIONS.—(1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—

(A) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding; or

(B) the employee refuses to operate a vehicle because—

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition.

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) FILING COMPLAINTS AND PROCEDURES.—(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. On receiving the complaint, the Secretary shall notify the person alleged to have committed the violation of the filing of the complaint.

(2)(A) Not later than 60 days after receiving a complaint, the Secretary shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify the complainant and the person alleged to have committed the violation of the findings. If the Secretary decides it is reasonable to believe a violation occurred, the Secretary shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.

(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

(C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.

(3)(A) If the Secretary decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary shall order the person to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including back pay.

(B) If the Secretary issues an order under subparagraph (A) of this paragraph and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint. The Secretary shall determine the costs that reasonably were incurred.

(c) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. The review shall be heard and decided expeditiously. An order of the Secretary subject to review under this subsection is not subject to judicial review in a criminal or other civil proceeding.

(d) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued under subsection (b) of this section, the Secretary shall bring

a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

**§31106. Commercial motor vehicle information system program**

(a) DEFINITION.—In this section, “commercial motor vehicle” means a self-propelled or towed vehicle used on highways in intrastate or interstate commerce to transport passengers or property, if the vehicle—

(1) has a gross vehicle weight rating of at least 10,001 pounds;

(2) is designed to transport more than 15 passengers, including the driver; or

(3) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and that material is transported in a quantity requiring placarding under regulations the Secretary prescribes under section 5103.

(b) INFORMATION SYSTEM.—(1) In cooperation with the States, the Secretary may establish as part of the motor carrier safety information network system of the Department of Transportation and similar State systems, an information system to serve as a clearinghouse and depository of information related to State registration and licensing of commercial motor vehicles and the safety fitness of the commercial motor vehicle registrants. The Secretary shall include in the system information on the safety fitness of each of the registrants and other information the Secretary considers appropriate, including information on vehicle inspections and out-of-service orders.

(2) The operation of the information system established under paragraph (1) of this subsection shall be paid for by a schedule of user fees. The Secretary may authorize the operation of the information system by contract, through an agreement with one or more States, or by designating, after consulting with the States, a third party that represents the interests of the States.

(3) The Secretary shall prescribe standards to ensure—

(A) uniform information collection and reporting by the States necessary to carry out this section; and

(B) the availability and reliability of the information to the States and the Secretary from the information system.

(c) DEMONSTRATION PROJECT.—The Secretary shall make grants to States to carry out a project to demonstrate ways of establishing an information system that will link the motor carrier safety information network system of the Department and similar State systems with the motor vehicle registration and licensing systems of the States. The project shall be designed—

(1) to allow a State when issuing license plates for a commercial motor vehicle to establish through use of the information system the safety fitness of the person seeking to register the vehicle; and

(2) to decide on types of sanctions that may be imposed on the registrant, or the types of conditions or limitations that may be imposed on the operations of the registrant, to ensure the safety fitness of the registrant.

(d) REVIEW OF STATE SYSTEMS.—Not later than December 18, 1992, the Secretary, in cooperation with the States, shall review State motor vehicle registration systems related to license tags for commercial motor vehicles to decide whether those systems can be used in carrying out this section.

(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(f) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary shall submit a report to Congress on the cost, benefits, and feasibility of the information system established under subsection (b) of this section. If the Secretary decides that the system would be beneficial on a nationwide basis, the Secretary shall include in the report recommendations on legislation to implement a nationwide system.

(g) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry out this section may be made available to the Secretary under section 31104(g)(1)(B) of this title.

### **§ 31107. Truck and bus accident grant program**

(a) STATE GRANTS.—The Secretary of Transportation shall make grants to States that agree to adopt or have adopted the recommendations of the National Governors' Association related to police accident reports for truck and bus accidents. The Secretary may make a grant under this section only to assist a State in carrying out those recommendations, including—

(1) assisting the State in designing appropriate forms;

(2) drafting instruction manuals;

(3) training appropriate State and local officers on matters, including training on accident investigation techniques to decide on the probable cause of truck and bus accidents;

(4) analyzing and evaluating safety information to develop recommended changes to existing safety programs necessary to address more effectively the causes of truck and bus accidents; and

(5) other activities the Secretary decides are appropriate to carry out this section.

(b) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordinate grants made under this section with highway safety programs under section 402 of title 23. The Secretary may require that the informa-

tion from police reports for truck and bus accidents be included in reports made to the Secretary under the uniform information collection and reporting program under section 402.

(c) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry out this section may be made available to the Secretary under section 31104(g)(1)(C) of this title.

### **§ 31108. Authorization of appropriations**

Not more than \$----- may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19--, to carry out the safety duties and powers of the Federal Highway Administration.

## **SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS**

### **§ 31111. Length limitations**

(a) DEFINITIONS.—In this section—

(1) “maxi-cube vehicle” means a truck tractor combined with a semitrailer and a separable property-carrying unit designed to be loaded and unloaded through the semitrailer, with the length of the separable property-carrying unit being not more than 34 feet and the length of the vehicle combination being not more than 65 feet.

(2) “truck tractor” means—

(A) a non-property-carrying power unit that operates in combination with a semitrailer or trailer; or

(B) a power unit that carries as property only motor vehicles when operating in combination with a semitrailer in transporting motor vehicles.

(b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

(A) imposes a vehicle length limitation of less than 45 feet on a bus, of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination, or of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under subsection (e) of this section;

(B) imposes an overall length limitation on a commercial motor vehicle operating in a truck tractor-semitrailer or truck tractor-semitrailer-trailer combination;

(C) has the effect of prohibiting the use of a semitrailer or trailer of the same dimensions as those that were in actual and lawful use in that State on December 1, 1982; or

1 (D) has the effect of prohibiting the use of an existing semitrailer  
 2 or trailer, of not more than 28.5 feet in length, in a truck tractor-  
 3 semitrailer-trailer combination if the semitrailer or trailer was operat-  
 4 ing lawfully on December 1, 1982, within a 65-foot overall length limit  
 5 in any State.

6 (2) A length limitation prescribed or enforced by a State under paragraph  
 7 (1)(A) of this subsection applies only to a semitrailer or trailer and not to  
 8 a truck tractor.

9 (c) MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.—A State  
 10 may not prohibit a maxi-cube vehicle or a commercial motor vehicle com-  
 11 bination consisting of a truck tractor and 2 trailing units on any segment  
 12 of the Dwight D. Eisenhower System of Interstate and Defense Highways  
 13 (except a segment exempted under subsection (f) of this section) and those  
 14 classes of qualifying Federal-aid Primary System highways designated by  
 15 the Secretary under subsection (e) of this section.

16 (d) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—  
 17 Length calculated under this section does not include a safety or energy  
 18 conservation device the Secretary decides is necessary for safe and efficient  
 19 operation of a commercial motor vehicle. However, such a device may not  
 20 have by its design or use the ability to carry cargo.

21 (e) QUALIFYING HIGHWAYS.—The Secretary by regulation shall designate  
 22 as qualifying Federal-aid Primary System highways those highways of the  
 23 Federal-aid Primary System in existence on June 1, 1991, that can accom-  
 24 modate safely the applicable vehicle lengths provided in this section.

25 (f) EXEMPTIONS.—(1) If the chief executive officer of a State, after con-  
 26 sulting under paragraph (2) of this subsection, decides a segment of the  
 27 Dwight D. Eisenhower System of Interstate and Defense Highways is not  
 28 capable of safely accommodating a commercial motor vehicle having a length  
 29 described in subsection (b)(1)(A) of this section or the motor vehicle com-  
 30 bination described in subsection (c) of this section, the chief executive officer  
 31 may notify the Secretary of that decision and request the Secretary to ex-  
 32 empt that segment from either or both provisions.

33 (2) Before making a decision under paragraph (1) of this subsection, the  
 34 chief executive officer shall consult with units of local government in the  
 35 State in which the segment of the Dwight D. Eisenhower System of Inter-  
 36 state and Defense Highways is located and with the chief executive officer  
 37 of any adjacent State that may be directly affected by the exemption. As  
 38 part of the consultations, consideration shall be given to any potential alter-  
 39 native route that serves the area in which the segment is located and can  
 40 safely accommodate a commercial motor vehicle having a length described

1 in subsection (b)(1)(A) of this section or the motor vehicle combination de-  
 2 scribed in subsection (c) of this section.

3 (3) A chief executive officer's notification under this subsection must in-  
 4 clude specific evidence of safety problems supporting the officer's decision  
 5 and the results of consultations about alternative routes.

6 (4)(A) If the Secretary decides, on request of a chief executive officer or  
 7 on the Secretary's own initiative, a segment of the Dwight D. Eisenhower  
 8 System of Interstate and Defense Highways is not capable of safely accom-  
 9 modating a commercial motor vehicle having a length described in sub-  
 10 section (b)(1)(A) of this section or the motor vehicle combination described  
 11 in subsection (c) of this section, the Secretary shall exempt the segment  
 12 from either or both of those provisions. Before making a decision under this  
 13 paragraph, the Secretary shall consider any possible alternative route that  
 14 serves the area in which the segment is located.

15 (B) The Secretary shall make a decision about a specific segment not  
 16 later than 120 days after the date of receipt of notification from a chief  
 17 executive officer under paragraph (1) of this subsection or the date on  
 18 which the Secretary initiates action under subparagraph (A) of this para-  
 19 graph, whichever is applicable. If the Secretary finds the decision will not  
 20 be made in time, the Secretary immediately shall notify Congress, giving the  
 21 reasons for the delay, information about the resources assigned, and the  
 22 projected date for the decision.

23 (C) Before making a decision, the Secretary shall give an interested per-  
 24 son notice and an opportunity for comment. If the Secretary exempts a seg-  
 25 ment under this subsection before the final regulations under subsection (e)  
 26 of this section are prescribed, the Secretary shall include the exemption as  
 27 part of the final regulations. If the Secretary exempts the segment after the  
 28 final regulations are prescribed, the Secretary shall publish the exemption  
 29 as an amendment to the final regulations.

30 (g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regula-  
 31 tions to carry out this section, the Secretary may make decisions necessary  
 32 to accommodate specialized equipment, including automobile and vessel  
 33 transporters and maxi-cube vehicles.

### 34 **§ 31112. Property-carrying unit limitation**

35 (a) DEFINITIONS.—In this section—

36 (1) “property-carrying unit” means any part of a commercial motor  
 37 vehicle combination (except the truck tractor) used to carry property,  
 38 including a trailer, a semitrailer, or the property-carrying section of a  
 39 single unit truck.



1           (2) the length of the property-carrying units of a commercial motor  
2           vehicle combination is the length measured from the front of the first  
3           property-carrying unit to the rear of the last property-carrying unit.

4           (b) GENERAL LIMITATIONS.—A State may not allow by any means the  
5           operation, on any segment of the Dwight D. Eisenhower System of Inter-  
6           state and Defense Highways and those classes of qualifying Federal-aid Pri-  
7           mary System highways designated by the Secretary of Transportation under  
8           section 31111(e) of this title, of any commercial motor vehicle combination  
9           (except a vehicle or load that cannot be dismantled easily or divided easily  
10          and that has been issued a special permit under applicable State law) with  
11          more than one property-carrying unit (not including the truck tractor)  
12          whose property-carrying units are more than—

13          (1) the maximum combination trailer, semitrailer, or other type of  
14          length limitation allowed by law or regulation of that State before June  
15          2, 1991; or

16          (2) the length of the property-carrying units of those commercial  
17          motor vehicle combinations, by specific configuration, in actual, lawful  
18          operation on a regular or periodic basis (including continuing seasonal  
19          operation) in that State before June 2, 1991.

20          (c) SPECIAL RULES FOR WYOMING, OHIO, AND ALASKA.—In addition to  
21          the vehicles allowed under subsection (b) of this section—

22          (1) Wyoming may allow the operation of additional vehicle configura-  
23          tions not in actual operation on June 1, 1991, but authorized by State  
24          law not later than November 3, 1992, if the vehicle configurations com-  
25          ply with the single axle, tandem axle, and bridge formula limits in sec-  
26          tion 127(a) of title 23 and are not more than 117,000 pounds gross  
27          vehicle weight;

28          (2) Ohio may allow the operation of commercial motor vehicle com-  
29          binations with 3 property-carrying units of 28.5 feet each (not includ-  
30          ing the truck tractor) not in actual operation on June 1, 1991, to be  
31          operated in Ohio on the 1-mile segment of Ohio State Route 7 that  
32          begins at and is south of exit 16 of the Ohio Turnpike; and

33          (3) Alaska may allow the operation of commercial motor vehicle com-  
34          binations that were not in actual operation on June 1, 1991, but were  
35          in actual operation before July 6, 1991.

36          (d) ADDITIONAL LIMITATIONS.—(1) A commercial motor vehicle combina-  
37          tion whose operation in a State is not prohibited under subsections (b) and  
38          (c) of this section may continue to operate in the State on highways de-  
39          scribed in subsection (b) only if at least in compliance with all State laws,  
40          regulations, limitations, and conditions, including routing-specific and con-  
41          figuration-specific designations and all other restrictions in force in the

1 State on June 1, 1991. However, subject to regulations prescribed by the  
2 Secretary under subsection (g)(2) of this section, the State may make minor  
3 adjustments of a temporary and emergency nature to route designations and  
4 vehicle operating restrictions in effect on June 1, 1991, for specific safety  
5 purposes and road construction.

6 (2) This section does not prevent a State from further restricting in any  
7 way or prohibiting the operation of any commercial motor vehicle combina-  
8 tion subject to this section, except that a restriction or prohibition shall be  
9 consistent with this section and sections 31113(a) and (b) and 31114 of this  
10 title.

11 (3) A State making a minor adjustment of a temporary and emergency  
12 nature as authorized by paragraph (1) of this subsection or further restrict-  
13 ing or prohibiting the operation of a commercial motor vehicle combination  
14 as authorized by paragraph (2) of this subsection shall advise the Secretary  
15 not later than 30 days after the action. The Secretary shall publish a notice  
16 of the action in the Federal Register.

17 (e) LIST OF STATE LENGTH LIMITATIONS.—(1) Not later than February  
18 16, 1992, each State shall submit to the Secretary for publication a com-  
19 plete list of State length limitations applicable to commercial motor vehicle  
20 combinations operating in the State on the highways described in subsection  
21 (b) of this section. The list shall indicate the applicable State laws and regu-  
22 lations associated with the length limitations. If a State does not submit the  
23 information as required, the Secretary shall complete and file the informa-  
24 tion for the State.

25 (2) Not later than March 17, 1992, the Secretary shall publish an interim  
26 list in the Federal Register consisting of all information submitted under  
27 paragraph (1) of this subsection. The Secretary shall review for accuracy  
28 all information submitted by a State under paragraph (1) and shall solicit  
29 and consider public comment on the accuracy of the information.

30 (3) A law or regulation may not be included on the list submitted by a  
31 State or published by the Secretary merely because it authorized, or could  
32 have authorized, by permit or otherwise, the operation of commercial motor  
33 vehicle combinations not in actual operation on a regular or periodic basis  
34 before June 2, 1991.

35 (4) Except as revised under this paragraph or paragraph (5) of this sub-  
36 section, the list shall be published as final in the Federal Register not later  
37 than June 15, 1992. In publishing the final list, the Secretary shall make  
38 any revisions necessary to correct inaccuracies identified under paragraph  
39 (2) of this subsection. After publication of the final list, commercial motor  
40 vehicle combinations prohibited under subsection (b) of this section may not  
41 operate on the Dwight D. Eisenhower System of Interstate and Defense

1 Highways and other Federal-aid Primary System highways designated by  
 2 the Secretary except as published on the list. The list may be combined by  
 3 the Secretary with the list required under section 127(d) of title 23.

4 (5) On the Secretary's own motion or on request by any person (including  
 5 a State), the Secretary shall review the list published under paragraph (4)  
 6 of this subsection. If the Secretary decides there is reason to believe a mis-  
 7 take was made in the accuracy of the list, the Secretary shall begin a pro-  
 8 ceeding to decide whether a mistake was made. If the Secretary decides  
 9 there was a mistake, the Secretary shall publish the correction.

10 (f) LIMITATIONS ON STATUTORY CONSTRUCTION.—This section may not  
 11 be construed—

12 (1) to allow the operation on any segment of the Dwight D. Eisen-  
 13 hower System of Interstate and Defense Highways of a longer com-  
 14 bination vehicle prohibited under section 127(d) of title 23;

15 (2) to affect in any way the operation of a commercial motor vehicle  
 16 having only one property-carrying unit; or

17 (3) to affect in any way the operation in a State of a commercial  
 18 motor vehicle with more than one property-carrying unit if the vehicle  
 19 was in actual operation on a regular or periodic basis (including sea-  
 20 sonal operation) in that State before June 2, 1991, that was authorized  
 21 under State law or regulation or lawful State permit.

22 (g) REGULATIONS.—(1) In carrying out this section only, the Secretary  
 23 shall define by regulation loads that cannot be dismantled easily or divided  
 24 easily.

25 (2) Not later than June 15, 1992, the Secretary shall prescribe regula-  
 26 tions establishing criteria for a State to follow in making minor adjustments  
 27 under subsection (d) of this section.

## 28 **§ 31113. Width limitations**

29 (a) GENERAL LIMITATIONS.—(1) Except as provided in subsection (e) of  
 30 this section, a State (except Hawaii) may not prescribe or enforce a regula-  
 31 tion of commerce that imposes a vehicle width limitation of more or less  
 32 than 102 inches on a commercial motor vehicle operating on—

33 (A) a segment of the Dwight D. Eisenhower System of Interstate  
 34 and Defense Highways (except a segment exempted under subsection  
 35 (e) of this section);

36 (B) a qualifying Federal-aid highway designated by the Secretary of  
 37 Transportation, with traffic lanes designed to be at least 12 feet wide;  
 38 or

39 (C) a qualifying Federal-aid Primary System highway designated by  
 40 the Secretary if the Secretary decides the designation is consistent with  
 41 highway safety.

(2) Notwithstanding paragraph (1) of this subsection, a State may continue to enforce a regulation of commerce in effect on April 6, 1983, that applies to a commercial motor vehicle of more than 102 inches in width, until the date on which the State prescribes a regulation of commerce that complies with this subsection.

(3) A Federal-aid highway (except an interstate highway) not designated under this subsection on June 5, 1984, may be designated under this subsection only with the agreement of the chief executive officer of the State in which the highway is located.

(b) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Width calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle.

(c) SPECIAL USE PERMITS.—A State may grant a special use permit to a commercial motor vehicle that is more than 102 inches in width.

(d) STATE ENFORCEMENT.—Consistent with this section, a State may enforce a commercial motor vehicle width limitation of 102 inches on a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section) or other qualifying Federal-aid highway designated by the Secretary.

(e) EXEMPTIONS.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having the width provided in subsection (a) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having the width provided for in subsection (a) of this section.

(3) A chief executive officer's notification under this subsection must include specific evidence of safety problems supporting the officer's decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary's own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a width provided in subsection (a) of this section, the Secretary shall exempt the segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (a) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

#### **§ 31114. Access to the Interstate System**

(a) PROHIBITION ON DENYING ACCESS.—A State may not enact or enforce a law denying to a commercial motor vehicle subject to this subchapter or subchapter I of this chapter reasonable access between—

(1) the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under section 31111(f) or 31113(e) of this title) and other qualifying Federal-aid Primary System highways designated by the Secretary of Transportation; and

(2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers, motor carriers of passengers, or any truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

(b) EXCEPTION.—This section does not prevent a State or local government from imposing reasonable restrictions, based on safety considerations, on a truck tractor-semitrailer combination in which the semitrailer has a

length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

### **§31115. Enforcement**

On the request of the Secretary of Transportation, the Attorney General shall bring a civil action for appropriate injunctive relief to ensure compliance with this subchapter or subchapter I of this chapter. The action may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a State or person to comply with this subchapter, subchapter I, or a regulation prescribed under this subchapter or subchapter I.

## **SUBCHAPTER III—SAFETY REGULATION**

### **§31131. Purposes and findings**

(a) **PURPOSES.**—The purposes of this subchapter are—

- (1) to promote the safe operation of commercial motor vehicles;
- (2) to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety; and
- (3) to ensure increased compliance with traffic laws and with the commercial motor vehicle safety and health regulations and standards prescribed and orders issued under this chapter.

(b) **FINDINGS.**—Congress finds—

- (1) it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage;
- (2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;
- (3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and
- (4) interested State governments can provide valuable assistance to the United States Government in ensuring that commercial motor vehicle operations are conducted safely and healthfully.

### **§31132. Definitions**

In this subchapter—

- (1) “commercial motor vehicle” means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—
  - (A) has a gross vehicle weight rating of at least 10,001 pounds;

1 (B) is designed to transport more than 15 passengers including  
2 the driver; or

3 (C) is used in transporting material found by the Secretary of  
4 Transportation to be hazardous under section 5103 of this title  
5 and transported in a quantity requiring placarding under regula-  
6 tions prescribed by the Secretary under section 5103.

7 (2) “employee” means an operator of a commercial motor vehicle (in-  
8 cluding an independent contractor when operating a commercial motor  
9 vehicle), a mechanic, a freight handler, or an individual not an em-  
10 ployer, who—

11 (A) directly affects commercial motor vehicle safety in the  
12 course of employment; and

13 (B) is not an employee of the United States Government, a  
14 State, or a political subdivision of a State acting in the course of  
15 the employment by the Government, a State, or a political subdivi-  
16 sion of a State.

17 (3) “employer”—

18 (A) means a person engaged in a business affecting interstate  
19 commerce that owns or leases a commercial motor vehicle in con-  
20 nection with that business, or assigns an employee to operate it;  
21 but

22 (B) does not include the Government, a State, or a political sub-  
23 division of a State.

24 (4) “interstate commerce” means trade, traffic, or transportation in  
25 the United States between a place in a State and—

26 (A) a place outside that State (including a place outside the  
27 United States); or

28 (B) another place in the same State through another State or  
29 through a place outside the United States.

30 (5) “intrastate commerce” means trade, traffic, or transportation in  
31 a State that is not interstate commerce.

32 (6) “regulation” includes a standard or order.

33 (7) “State” means a State of the United States, the District of Co-  
34 lumbia, and, in sections 31136 and 31140–31142 of this title, a politi-  
35 cal subdivision of a State.

36 (8) “State law” includes a law enacted by a political subdivision of  
37 a State.

38 (9) “State regulation” includes a regulation prescribed by a political  
39 subdivision of a State.

40 (10) “United States” means the States of the United States and the  
41 District of Columbia.

1 **§ 31133. General powers of the Secretary of Transportation**

2 (a) GENERAL.—In carrying out this subchapter and regulations pre-  
3 scribed under section 31102 of this title, the Secretary of Transportation  
4 may—

- 5 (1) conduct inspections and investigations;
- 6 (2) compile statistics;
- 7 (3) make reports;
- 8 (4) issue subpoenas;
- 9 (5) require production of records and property;
- 10 (6) take depositions;
- 11 (7) hold hearings;
- 12 (8) prescribe recordkeeping and reporting requirements;
- 13 (9) conduct or make contracts for studies, development, testing, eval-  
14 uation, and training; and
- 15 (10) perform other acts the Secretary considers appropriate.

16 (b) CONSULTATION.—In conducting inspections and investigations under  
17 subsection (a) of this section, the Secretary shall consult, as appropriate,  
18 with employers and employees and their authorized representatives and offer  
19 them a right of accompaniment.

20 (c) DELEGATION.—The Secretary may delegate to a State receiving a  
21 grant under section 31102 of this title those duties and powers related to  
22 enforcement (including conducting investigations) of this subchapter and  
23 regulations prescribed under this subchapter that the Secretary considers  
24 appropriate.

25 **§ 31134. Commercial Motor Vehicle Safety Regulatory Re-**  
26 **view Panel**

27 (a) ESTABLISHMENT AND GENERAL DUTY.—The Secretary of Transpor-  
28 tation shall establish the Commercial Motor Vehicle Safety Regulatory Re-  
29 view Panel. The Panel shall analyze and review State laws and regulations  
30 under sections 31140 and 31141 of this title.

31 (b) SPECIFIC DUTIES.—The Panel shall—

- 32 (1) carry out those duties and powers designated to be carried out  
33 by the Panel under sections 31140 and 31141 of this title;
- 34 (2) conduct a study to—
  - 35 (A) evaluate the need, if any, for additional assistance from the  
36 United States Government to the States to enable them to enforce  
37 the regulations prescribed by the Secretary under section 31136  
38 of this title; and
  - 39 (B) decide on other methods of furthering the purposes of this  
40 subchapter; and



1           (3) make recommendations to the Secretary based on the results of  
2           the study conducted under clause (2) of this subsection.

3           (c) COMPOSITION, APPOINTMENT, AND TERMS.—(1) The Panel shall be  
4           composed of 15 members as follows:

5                 (A) the Secretary or the Secretary's delegate.

6                 (B) 7 individuals appointed by the Secretary from among individuals  
7                 who represent the interests of States and political subdivisions of  
8                 States and whose names have been submitted to the Secretary by the  
9                 Committee on Commerce, Science, and Transportation of the Senate or  
10                the Committee on Public Works and Transportation of the House of  
11                Representatives.

12               (C) 7 individuals appointed by the Secretary from among individuals  
13               who represent the interests of business, consumer, labor, and safety  
14               groups and whose names have been submitted to the Secretary by the  
15               Committee on Commerce, Science, and Transportation of the Senate or  
16               the Committee on Public Works and Transportation of the House of  
17               Representatives.

18           (2) The Secretary shall select the individuals to be appointed under this  
19           subsection on the basis of their knowledge, expertise, or experience related  
20           to commercial motor vehicle safety. Half of the appointments shall be made  
21           from names submitted by the Committee on Commerce, Science, and Trans-  
22           portation of the Senate, and the other half from names submitted by the  
23           Committee on Public Works and Transportation of the House of Represent-  
24           atives. Each of these committees shall submit to the Secretary the names  
25           of 20 individuals qualified to serve on the Panel.

26           (3) The term of each member of the Panel appointed under paragraph  
27           (1)(B) and (C) of this subsection is 7 years.

28           (4) A vacancy on the Panel shall be filled in the way the original appoint-  
29           ment was made. The vacancy does not affect the Panel's powers.

30           (d) CHAIRMAN, QUORUM, MEETINGS, AND PAY.—(1) The Secretary is  
31           the Chairman of the Panel.

32           (2) Eight members of the Panel are a quorum, but the Panel may estab-  
33           lish a lesser number as a quorum to hold hearings, take testimony, and re-  
34           ceive evidence.

35           (3) The Panel shall meet at the call of the Chairman or a majority of  
36           its members.

37           (4) Members of the Panel shall serve without pay, except that they shall  
38           receive per diem and travel expenses under section 5703 of title 5.

39           (e) PERSONNEL, OFFICE SPACE, AND SUPPORT SERVICES.—On request  
40           of the Panel, the Secretary shall—

1 (1) detail personnel of the Department of Transportation to the  
 2 Panel as necessary to assist the Panel in carrying out its duties and  
 3 powers; and

4 (2) provide office space, supplies, equipment, and other support serv-  
 5 ices to the Panel as necessary for the Panel to carry out its duties and  
 6 powers.

7 (f) HEARINGS AND OTHER ACTIONS.—To carry out the duties and pow-  
 8 ers of the Panel under this subchapter, the Panel or any member authorized  
 9 by the Panel may hold hearings, sit and act at times and places, take testi-  
 10 mony, and take other actions the Panel or the member considers advisable.  
 11 A member of the Panel may administer oaths to witnesses appearing before  
 12 the Panel or the member.

13 (g) TEMPORARY AND INTERMITTENT SERVICES.—Subject to regulations  
 14 the Panel may prescribe, the Chairman may procure the temporary or inter-  
 15 mittent services of experts or consultants under section 3109 of title 5.

16 **§ 31135. Duties of employers and employees**

17 Each employer and employee shall comply with regulations on commercial  
 18 motor vehicle safety prescribed by the Secretary of Transportation under  
 19 this subchapter that apply to the employer's or employee's conduct.

20 **§ 31136. United States Government regulations**

21 (a) MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this  
 22 title, the Secretary of Transportation shall prescribe regulations on commer-  
 23 cial motor vehicle safety. The regulations shall prescribe minimum safety  
 24 standards for commercial motor vehicles. At a minimum, the regulations  
 25 shall ensure that—

26 (1) commercial motor vehicles are maintained, equipped, loaded, and  
 27 operated safely;

28 (2) the responsibilities imposed on operators of commercial motor ve-  
 29 hicles do not impair their ability to operate the vehicles safely;

30 (3) the physical condition of operators of commercial motor vehicles  
 31 is adequate to enable them to operate the vehicles safely; and

32 (4) the operation of commercial motor vehicles does not have a dele-  
 33 terious effect on the physical condition of the operators.

34 (b) ELIMINATING AND AMENDING EXISTING REGULATIONS.—The Sec-  
 35 retary may not eliminate or amend an existing motor carrier safety regula-  
 36 tion related only to the maintenance, equipment, loading, or operation (in-  
 37 cluding routing) of vehicles carrying material found to be hazardous under  
 38 section 5103 of this title until an equivalent or more stringent regulation  
 39 has been prescribed under section 5103.

(c) PROCEDURES AND CONSIDERATIONS.—(1) A regulation under this section shall be prescribed under section 553 of title 5 (without regard to sections 556 and 557 of title 5).

(2) Before prescribing regulations under this section, the Secretary shall consider, to the extent practicable and consistent with the purposes of this chapter—

(A) costs and benefits; and

(B) State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption.

(d) EFFECT OF EXISTING REGULATIONS.—If the Secretary does not prescribe regulations on commercial motor vehicle safety under this section, regulations on commercial motor vehicle safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section.

(e) WAIVERS.—After notice and an opportunity for comment, the Secretary may waive any part of a regulation prescribed under this section as it applies to a person or class of persons, if the Secretary decides that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Under this subsection, the Secretary shall waive the regulations prescribed under this section as they apply to schoolbuses (as defined in section 30125(a) of this title) unless the Secretary decides that making the regulations applicable to schoolbuses is necessary for public safety, considering all laws of the United States and States applicable to schoolbuses. A waiver under this subsection shall be published in the Federal Register, with the reasons for the waiver.

(f) LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMPTIONS AND WAIVERS.—(1) The Secretary may not—

(A) exempt a person or commercial motor vehicle from a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality; or

(B) waive application to a person or commercial motor vehicle of a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality.

(2) If a person was authorized to operate a commercial motor vehicle in a municipality or commercial zone of a municipality in the United States for the entire period from November 19, 1987, through November 18, 1988, and if the person is otherwise qualified to operate a commercial motor vehi-

cle, the person may operate a commercial motor vehicle entirely in a municipality or commercial zone of a municipality notwithstanding—

(A) paragraph (1) of this subsection;

(B) a minimum age requirement of the United States Government for operation of the vehicle; and

(C) a medical or physical condition that—

(i) would prevent an operator from operating a commercial motor vehicle under the commercial motor vehicle safety regulations in title 49, Code of Federal Regulations;

(ii) existed on July 1, 1988;

(iii) has not substantially worsened; and

(iv) does not involve alcohol or drug abuse.

(3) This subsection does not affect a State commercial motor vehicle safety law applicable to intrastate commerce.

**§31137. Monitoring device and brake maintenance regulations**

(a) USE OF MONITORING DEVICES.—If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

(b) BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.—Not later than December 31, 1990, the Secretary shall prescribe regulations on improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are maintained properly and inspected by appropriate employees. At a minimum, the regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting the brakes and brake systems.

**§31138. Minimum financial responsibility for transporting passengers**

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in the United States between a place in a State and—

(1) a place in another State;

(2) another place in the same State through a place outside of that State; or

(3) a place outside the United States.

(b) MINIMUM AMOUNTS.—The level of financial responsibility established under subsection (a) of this section for a motor vehicle with a seating capacity of—

(1) at least 16 passengers shall be at least \$5,000,000; and

(2) not more than 15 passengers shall be at least \$1,500,000.

(c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance, including high self-retention.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(d) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(e) NONAPPLICATION.—This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service, having a seating capacity of not more than 6 passengers, and not being operated on a regular route or between specified places; or

(3) carrying not more than 15 individuals in a single, daily round trip to and from work.

**§ 31139. Minimum financial responsibility for transporting property**

(a) DEFINITIONS.—In this section—

(1) “farm vehicle” means a vehicle—

(A) designed or adapted and used only for agriculture;

(B) operated by a motor private carrier (as defined in section 10102 of this title); and

(C) operated only incidentally on highways.

(2) “interstate commerce” includes transportation between a place in a State and a place outside the United States, to the extent the transportation is in the United States.

(3) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) GENERAL REQUIREMENT AND MINIMUM AMOUNT.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property for compensation by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(2) The level of financial responsibility established under paragraph (1) of this subsection shall be at least \$750,000.

(c) REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and envi-

ronmental restoration for the transportation by motor vehicle in interstate or intrastate commerce of—

(A) hazardous material (as defined by the Secretary);

(B) oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency); or

(C) hazardous wastes (as defined by the Administrator).

(2)(A) Except as provided in subparagraph (B) of this paragraph, the level of financial responsibility established under paragraph (1) of this subsection shall be at least \$5,000,000 for the transportation—

(i) of hazardous substances (as defined by the Administrator) in cargo tanks, portable tanks, or hopper-type vehicles, with capacities of more than 3,500 water gallons;

(ii) in bulk of class A explosives, poison gas, liquefied gas, or compressed gas; or

(iii) of large quantities of radioactive material.

(B) The Secretary of Transportation by regulation may reduce the minimum level in subparagraph (A) of this paragraph (to an amount not less than \$1,000,000) for transportation described in subparagraph (A) in any of the territories of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands if—

(i) the chief executive officer of the territory requests the reduction;

(ii) the reduction will prevent a serious disruption in transportation service and will not adversely affect public safety; and

(iii) insurance of \$5,000,000 is not readily available.

(3) The level of financial responsibility established under paragraph (1) of this subsection for the transportation of a material, oil, substance, or waste not subject to paragraph (2) of this subsection shall be at least \$1,000,000. However, if the Secretary of Transportation finds it will not adversely affect public safety, the Secretary by regulation may reduce the amount for—

(A) a class of vehicles transporting such a material, oil, substance, or waste in intrastate commerce (except in bulk); and

(B) a farm vehicle transporting such a material or substance in interstate commerce (except in bulk).

(d) FOREIGN MOTOR CARRIERS AND PRIVATE CARRIERS.—Regulations prescribed under this section may allow foreign motor carriers and foreign motor private carriers (as those terms are defined in section 10530 of this title) providing transportation of property under a certificate of registration issued under section 10530 to meet the minimum levels of financial responsibility under this section only when those carriers are providing transportation for property in the United States.

(e) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(D) qualification as a self-insurer.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(f) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(g) NONAPPLICATION.—This section does not apply to a motor vehicle having a gross vehicle weight rating of less than 10,000 pounds if the vehicle is not used to transport in interstate or foreign commerce—



- (1) class A or B explosives;
- (2) poison gas; or
- (3) a large quantity of radioactive material.

**§31140. Submission of State laws and regulations for review**

(a) LAWS AND REGULATIONS IN EFFECT BEFORE APRIL 29, 1986.—A State that had in effect a State law or regulation on commercial motor vehicle safety before April 29, 1986, and wants to enforce the law or regulation after October 29, 1989, shall submit a copy of the law or regulation to the Secretary of Transportation and the Commercial Motor Vehicle Safety Regulatory Review Panel.

(b) LAWS ENACTED AND REGULATIONS ISSUED AFTER APRIL 29, 1986.—A State that enacts a State law or issues a regulation on commercial motor vehicle safety after April 29, 1986, shall submit a copy of the law or regulation to the Secretary and the Panel immediately after the enactment or issuance.

(c) INITIAL GUIDELINES.—The Secretary shall prescribe initial guidelines to assist the States in compiling and submitting State laws and regulations and other information under this section.

(d) ADDITIONAL INFORMATION.—As soon as practicable but not later than a date the Panel may establish, a State that submits a State law or regulation under this section to the Panel shall—

- (1) indicate in writing to the Panel whether the law or regulation—
  - (A) has the same effect as a regulation prescribed by the Secretary under section 31136 of this title;
  - (B) is less stringent than that regulation; or
  - (C) is additional to or more stringent than that regulation; and
- (2) submit to the Panel other information the Panel or the Secretary may require to carry out this subchapter.

**§31141. Review and preemption of State laws and regulations**

(a) PREEMPTION AFTER DECISION.—After October 29, 1989, a State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.

(b) ANALYSIS AND DECISIONS BY THE PANEL.—(1) The Commercial Motor Vehicle Safety Regulatory Review Panel annually shall analyze State laws and regulations and decide which of those laws and regulations are related to commercial motor vehicle safety.

(2) Not later than one year after the date the Secretary prescribes a regulation under section 31136 of this title or one year after the date the Panel decides under paragraph (1) of this subsection that a State law or regula-

tion is related to commercial motor vehicle safety, whichever is later, the Panel shall—

(A) decide whether the State law or regulation—

(i) has the same effect as the regulation prescribed by the Secretary;

(ii) is less stringent than that regulation; or

(iii) is additional to or more stringent than that regulation;

(B) decide, for each State law or regulation that the Panel decides is additional to or more stringent than the regulation prescribed by the Secretary, whether—

(i) the State law or regulation has no safety benefit;

(ii) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(iii) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce; and

(C) notify the Secretary of the Panel's decisions under this subsection.

(c) REVIEW AND DECISIONS BY SECRETARY.—(1) The Secretary shall review each State law and regulation on commercial motor vehicle safety. Not later than 18 months after the date the Panel notifies the Secretary of a decision under subsection (b) of this section, the Secretary shall—

(A) conduct a regulatory proceeding to decide under this subsection whether the State law or regulation may be enforced; and

(B) prescribe a final regulation.

(2) If the Secretary decides a State law or regulation has the same effect as a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced after October 29, 1989.

(3) If the Secretary decides a State law or regulation is less stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may not be enforced after October 29, 1989.

(4) If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced after October 29, 1989, unless the Secretary also decides that—

(A) the State law or regulation has no safety benefit;

(B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce.

(5)(A) In deciding about a State law or regulation under this subsection, the Secretary shall give great weight to the corresponding decision made by the Panel about that law or regulation under subsection (b) of this section.

(B) In deciding under paragraph (4) of this subsection whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.

(d) WAIVERS.—(1) A person (including a State) may petition the Secretary for a waiver of a decision of the Secretary that a State law or regulation may not be enforced under this section. The Secretary shall grant the waiver, as expeditiously as possible, if the person demonstrates to the satisfaction of the Secretary that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

(2) Before deciding whether to grant or deny a petition for a waiver under this subsection, the Secretary shall give the petitioner an opportunity for a hearing on the record.

(e) CONSOLIDATING PROCEEDINGS.—The Secretary may consolidate regulatory proceedings under this section if the Secretary decides that the consolidation will not adversely affect a party to a proceeding.

(f) WRITTEN NOTICE OF DECISIONS.—Not later than 10 days after making a decision under subsection (c) of this section that a State law or regulation may not be enforced, the Secretary shall give written notice to the State of that decision.

(g) JUDICIAL REVIEW AND VENUE.—(1) Not later than 60 days after the Secretary makes a decision under subsection (c) of this section, or grants or denies a petition for a waiver under subsection (d) of this section, a person (including a State) adversely affected by the decision, grant, or denial may file a petition for judicial review. The petition may be filed in the court of appeals of the United States for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(2) The court has jurisdiction to review the decision, grant, or denial and to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5.

(3) A judgment of a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

(4) The remedies provided for in this subsection are in addition to other remedies provided by law.

(h) EXTENSIONS OF DEADLINE.—(1) The Secretary may extend, for a period of not more than 12 months, the deadline of October 29, 1989, re-

ferred to in subsections (a) and (c) of this section and section 31140(a) of this title. On request of a State that is considering enacting a State law or prescribing a State regulation that may be enforced under this section, the Secretary—

(A) shall extend the deadline for that State for the period the State requests (but not more than 12 months); and

(B) may extend the deadline for that State, in addition to the extension under clause (A) of this paragraph, for a period of not more than 12 more months if the additional extension is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles.

(2) The total periods of extensions under this subsection for a State may not be more than 24 months.

(i) INITIATING REVIEW PROCEEDINGS.—To review a State law or regulation on commercial motor vehicle safety under this section, the Secretary may initiate a regulatory proceeding on the Secretary's own initiative or on petition of an interested person (including a State).

#### **§ 31142. Inspection of vehicles**

(a) INSPECTION OF SAFETY EQUIPMENT.—On the instruction of an authorized enforcement official of a State or of the United States Government, a commercial motor vehicle is required to pass an inspection of all safety equipment required under part 393 of title 49, Code of Federal Regulations.

(b) INSPECTION OF VEHICLES AND RECORD RETENTION.—The Secretary of Transportation shall prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of an inspection. The standards shall provide for annual or more frequent inspections of a commercial motor vehicle unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. Regulations prescribed under this subsection are deemed to be regulations prescribed under section 31136 of this title.

(c) PREEMPTION.—(1) Except as provided in paragraph (2) of this subsection, this subchapter and section 31102 of this title do not—

(A) prevent a State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) prevent a State from enforcing a program for inspection of commercial motor vehicles that the Secretary decides is as effective as the Government standards prescribed under subsection (b) of this section;

(C) prevent a State from enforcing a program for inspection of commercial motor vehicles that meets the requirements for membership in

1 the Commercial Vehicle Safety Alliance, as those requirements were in  
2 effect on October 30, 1984; or

3 (D) require a State that is enforcing a program described in clause  
4 (B) or (C) of this paragraph to enforce a Government standard pre-  
5 scribed under subsection (b) of this section or to adopt a provision on  
6 inspection of commercial motor vehicles in addition to that program to  
7 comply with the Government standards.

8 (2) The Government standards prescribed under subsection (b) of this  
9 section shall preempt a program of a State described in paragraph (1)(C)  
10 of this subsection as the program applies to the inspection of commercial  
11 motor vehicles in that State. The State may not enforce the program if the  
12 Secretary—

13 (A) decides, after notice and an opportunity for a hearing, that the  
14 State is not enforcing the program in a way that achieves the objectives  
15 of this section; and

16 (B) after making a decision under clause (A) of this paragraph, pro-  
17 vides the State with a 6-month period to improve the enforcement of  
18 the program to achieve the objectives of this section.

19 (d) INSPECTION TO BE ACCEPTED AS ADEQUATE IN ALL STATES.—A  
20 periodic inspection of a commercial motor vehicle under the Government  
21 standards prescribed under subsection (b) of this section or a program de-  
22 scribed in subsection (c)(1)(B) or (C) of this section that is being enforced  
23 shall be recognized as adequate in every State for the period of the inspec-  
24 tion. This subsection does not prohibit a State from making random inspec-  
25 tions of commercial motor vehicles.

26 (e) EFFECT OF GOVERNMENT STANDARDS.—The Government standards  
27 prescribed under subsection (b) of this section may not be enforced as the  
28 standards apply to the inspection of commercial motor vehicles in a State  
29 enforcing a program described in subsection (c)(1)(B) or (C) of this section  
30 if the Secretary decides that it is in the public interest and consistent with  
31 public safety for the Government standards not to be enforced as they apply  
32 to that inspection.

33 (f) APPLICATION OF STATE REGULATIONS TO GOVERNMENT-LEASED VE-  
34 HICLES AND OPERATORS.—A State receiving financial assistance under sec-  
35 tion 31102 of this title in a fiscal year may enforce in that fiscal year a  
36 regulation on commercial motor vehicle safety adopted by the State as the  
37 regulation applies to commercial motor vehicles and operators leased to the  
38 Government.

**§ 31143. Investigating complaints and protecting complainants**

(a) INVESTIGATING COMPLAINTS.—The Secretary of Transportation shall conduct a timely investigation of a nonfrivolous written complaint alleging that a substantial violation of a regulation prescribed under this subchapter is occurring or has occurred within the prior 60 days. The Secretary shall give the complainant timely notice of the findings of the investigation. The Secretary is not required to conduct separate investigations of duplicative complaints.

(b) PROTECTING COMPLAINANTS.—Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical means within the Secretary's authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure.

**§ 31144. Safety fitness of owners and operators**

(a) PROCEDURE.—(1) In cooperation with the Interstate Commerce Commission, the Secretary of Transportation shall prescribe regulations establishing a procedure to decide on the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers under sections 10922 and 10923 of this title. The procedure shall include—

(A) specific initial and continuing requirements to be met by the owners, operators, and persons to prove safety fitness;

(B) a means of deciding whether the owners, operators, and persons meet the safety fitness requirements under clause (A) of this paragraph; and

(C) specific time deadlines for action by the Secretary and the Commission in making fitness decisions.

(2) Regulations prescribed under this subsection supersede all regulations of the United States Government on safety fitness and safety rating of motor carriers in effect on October 30, 1984.

(b) FINDINGS AND ACTION ON APPLICATIONS.—The Commission shall—

(1) find an applicant for authority to operate as a motor carrier unfit if the applicant does not meet the safety fitness requirements established under subsection (a) of this section; and

(2) deny the application.

**§ 31145. Coordination of Governmental activities and paper-work**

The Secretary of Transportation shall coordinate the activities of departments, agencies, and instrumentalities of the United States Government to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary shall attempt to minimize paperwork burdens to ensure maximum coordination and to avoid overlap and the imposition of unreasonable burdens on persons subject to regulations under this subchapter.

**§ 31146. Relationship to other laws**

Except as provided in section 31136(b) of this title, this subchapter and the regulations prescribed under this subchapter do not affect chapter 51 of this title or a regulation prescribed under chapter 51.

**§ 31147. Limitations on authority**

(a) **TRAFFIC REGULATIONS.**—This subchapter does not authorize the Secretary of Transportation to prescribe traffic safety regulations or preempt State traffic regulations. However, the Secretary may prescribe traffic regulations to the extent their subject matter was regulated under parts 390–399 of title 49, Code of Federal Regulations, on October 30, 1984.

(b) **REGULATING THE MANUFACTURING OF VEHICLES.**—This subchapter does not authorize the Secretary to regulate the manufacture of commercial motor vehicles for any purpose, including fuel economy, safety, or emission control.

**SUBCHAPTER IV—MISCELLANEOUS**

**§ 31161. Procedures to ensure timely correction of safety violations**

(a) **DEFINITION.**—Section 31132(1) of this title applies to this section.

(b) **GENERAL.**—Not later than August 3, 1991, the Secretary of Transportation shall prescribe regulations establishing procedures to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection carried out with money authorized under section 31104 of this title.

(c) **VERIFICATION PROGRAM.**—The regulations shall establish a verification program for United States Government inspectors and States participating under section 31102 of this title to ensure that commercial motor vehicles and their operators found in violation of safety requirements have been brought into compliance with those requirements. The regulations shall include—

- (1) a nationwide system for random reinspection of the commercial motor vehicles and their operators that have been declared out-of-service because of those safety violations, with the main purpose of the sys-

tem being to verify that the violations have been corrected on a timely basis;

(2) a program of accountability for correcting all safety violations that shall provide that—

(A) the operator of a commercial motor vehicle for which a safety violation has been noted shall be issued a form prescribed by the Secretary;

(B) the person making the repairs necessary to correct the violation shall certify on the form the making of repairs and the date, location, and time of the repairs;

(C) the motor carrier responsible for the commercial motor vehicle or operator shall certify on the form that, based on the carrier's knowledge, the repairs necessary to correct the violation have been made; and

(D) appropriate State penalties shall be imposed for a false statement on the form or a failure to return the form to the appropriate State entity; and

(3) a system for ensuring that appropriate State penalties are imposed for failure to correct any of those safety violations.

#### **§ 31162. Compliance review priority**

If the Secretary of Transportation identifies a pattern of violations of State or local traffic safety laws or regulations or commercial motor vehicle safety regulations, standards, or orders among drivers of commercial motor vehicles employed by a particular motor carrier, the Secretary or a State representative shall ensure that the motor carrier receives a high priority for review of that carrier's compliance with applicable United States Government and State commercial motor vehicle safety regulations.

### **CHAPTER 313—COMMERCIAL MOTOR VEHICLE OPERATORS**

Sec.

- 31301. Definitions.
- 31302. Limitation on the number of driver's licenses.
- 31303. Notification requirements.
- 31304. Employer responsibilities.
- 31305. General driver fitness and testing.
- 31306. Alcohol and controlled substances testing.
- 31307. Minimum training requirements for operators of longer combination vehicles.
- 31308. Commercial driver's license.
- 31309. Commercial driver's license information system.
- 31310. Disqualifications.
- 31311. Requirements for State participation.
- 31312. Grants for testing and ensuring the fitness of operators of commercial motor vehicles.
- 31313. Grants for issuing commercial drivers' licenses and complying with State participation requirements.
- 31314. Withholding amounts for State noncompliance.
- 31315. Waiver authority.
- 31316. Limitation on statutory construction.



31317. Procedure for prescribing regulations.

**§31301. Definitions**

In this chapter—

(1) “alcohol” has the same meaning given the term “alcoholic beverage” in section 158(c) of title 23.

(2) “commerce” means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) “commercial driver’s license” means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) “commercial motor vehicle” means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating of at least 26,001 pounds or a lesser gross vehicle weight rating the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except that a vehicle shall not be included as a commercial motor vehicle under this subclause if—

(i) the vehicle does not satisfy the weight requirements of subclause (A) of this clause;

(ii) the vehicle transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and not otherwise regulated by the Secretary or transporting a consumer commodity or limited quantity of hazardous material as defined in section 171.8 of title 49, Code of Federal Regulations; and

(iii) the Secretary does not deny the application of this exception to the vehicle (individually or as part of a class of motor vehicles) in the interest of safety.

(5) except in section 31306, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

1 (6) “driver’s license” means a license issued by a State to an individ-  
 2 ual authorizing the individual to operate a motor vehicle on highways.

3 (7) “employee” means an operator of a commercial motor vehicle (in-  
 4 cluding an independent contractor when operating a commercial motor  
 5 vehicle) who is employed by an employer.

6 (8) “employer” means a person (including the United States Govern-  
 7 ment, a State, or a political subdivision of a State) that owns or leases  
 8 a commercial motor vehicle or assigns employees to operate a commer-  
 9 cial motor vehicle.

10 (9) “felony” means an offense under a law of the United States or  
 11 a State that is punishable by death or imprisonment for more than one  
 12 year.

13 (10) “hazardous material” has the same meaning given that term in  
 14 section 5102 of this title.

15 (11) “motor vehicle” means a vehicle, machine, tractor, trailer, or  
 16 semitrailer propelled or drawn by mechanical power and used on public  
 17 streets, roads, or highways, but does not include a vehicle, machine,  
 18 tractor, trailer, or semitrailer operated only on a rail line or custom  
 19 harvesting farm machinery.

20 (12) “serious traffic violation” means—

21 (A) excessive speeding, as defined by the Secretary by regula-  
 22 tion;

23 (B) reckless driving, as defined under State or local law;

24 (C) a violation of a State or local law on motor vehicle traffic  
 25 control (except a parking violation) and involving a fatality; and

26 (D) any other similar violation of a State or local law on motor  
 27 vehicle traffic control (except a parking violation) that the Sec-  
 28 retary designates by regulation as serious.

29 (13) “State” means a State of the United States and the District  
 30 of Columbia.

31 (14) “United States” means the States of the United States and the  
 32 District of Columbia.

### 33 **§ 31302. Limitation on the number of driver’s licenses**

34 An individual operating a commercial motor vehicle may have only one  
 35 driver’s license at any time, except during the 10-day period beginning on  
 36 the date the individual is issued a driver’s license.

### 37 **§ 31303. Notification requirements**

38 (a) VIOLATIONS.—An individual operating a commercial motor vehicle,  
 39 having a driver’s license issued by a State, and violating a State or local  
 40 law on motor vehicle traffic control (except a parking violation) shall notify  
 41 the individual’s employer of the violation. If the violation occurred in a State

other than the issuing State, the individual also shall notify a State official designated by the issuing State. The notifications required by this subsection shall be made not later than 30 days after the date the individual is found to have committed the violation.

(b) REVOCATIONS, SUSPENSIONS, AND CANCELLATIONS.—An employee who has a driver's license revoked, suspended, or canceled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify the employee's employer of the action not later than 30 days after the date of the action.

(c) PREVIOUS EMPLOYMENT.—(1) Subject to paragraph (2) of this subsection, an individual applying for employment as an operator of a commercial motor vehicle shall notify the prospective employer, at the time of the application, of any previous employment as an operator of a commercial motor vehicle.

(2) The Secretary of Transportation shall prescribe by regulation the period for which notice of previous employment must be given under paragraph (1) of this subsection. However, the period may not be less than the 10-year period ending on the date of the application.

#### **§ 31304. Employer responsibilities**

An employer may not knowingly allow an employee to operate a commercial motor vehicle in the United States during a period in which the employee—

- (1) has a driver's license revoked, suspended, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or
- (2) has more than one driver's license (except as allowed under section 31302 of this title).

#### **§ 31305. General driver fitness and testing**

(a) MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

- (1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;
- (2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;
- (3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

1 (4) shall ensure that an individual taking the tests has a working  
2 knowledge of—

3 (A) regulations on the safe operation of a commercial motor ve-  
4 hicle prescribed by the Secretary and contained in title 49, Code  
5 of Federal Regulations; and

6 (B) safety systems of the vehicle;

7 (5) shall ensure that an individual who operates or will operate a  
8 commercial motor vehicle carrying a hazardous material—

9 (A) is qualified to operate the vehicle under regulations on  
10 motor vehicle transportation of hazardous material prescribed  
11 under chapter 51 of this title; and

12 (B) has a working knowledge of—

13 (i) those regulations;

14 (ii) the handling of hazardous material;

15 (iii) the operation of emergency equipment used in response  
16 to emergencies arising out of the transportation of hazardous  
17 material; and

18 (iv) appropriate response procedures to follow in those  
19 emergencies;

20 (6) shall establish minimum scores for passing the tests;

21 (7) shall ensure that an individual taking the tests is qualified to op-  
22 erate a commercial motor vehicle under regulations prescribed by the  
23 Secretary and contained in title 49, Code of Federal Regulations, to  
24 the extent the regulations apply to the individual; and

25 (8) may require—

26 (A) issuance of a certification of fitness to operate a commercial  
27 motor vehicle to an individual passing the tests; and

28 (B) the individual to have a copy of the certification in the indi-  
29 vidual's possession when the individual is operating a commercial  
30 motor vehicle.

31 (b) REQUIREMENTS FOR OPERATING VEHICLES.—(1) Except as provided  
32 in paragraph (2) of this subsection, an individual may operate a commercial  
33 motor vehicle only if the individual has passed written and driving tests to  
34 operate the vehicle that meet the minimum standards prescribed by the Sec-  
35 retary under subsection (a) of this section.

36 (2) The Secretary may prescribe regulations providing that an individual  
37 may operate a commercial motor vehicle for not more than 90 days if the  
38 individual—

39 (A) passes a driving test for operating a commercial motor vehicle  
40 that meets the minimum standards prescribed under subsection (a) of  
41 this section; and

(B) has a driver's license that is not suspended, revoked, or canceled.

**§ 31306. Alcohol and controlled substances testing**

(a) DEFINITION.—In this section, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHICLES.—(1)(A) In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations not later than October 28, 1992, that establish a program requiring motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of an operator of a commercial motor vehicle be conducted when loss of human life occurs in an accident involving a commercial motor vehicle; and

(B) may require that post-accident testing of such an operator be conducted when bodily injury or significant property damage occurs in any other serious accident involving a commercial motor vehicle.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures

governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that any test indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) TESTING AS PART OF MEDICAL EXAMINATION.—The Secretary of Transportation may provide that testing under subsection (a) of this section for operators subject to subpart E of part 391 of title 49, Code of Federal Regulations, be conducted as part of the medical examination required under that subpart.

(e) REHABILITATION.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which those operators shall be required to participate in a program. This section does not prevent a motor carrier from establishing a program under this section in cooperation with another motor carrier.

(f) SANCTIONS.—The Secretary of Transportation shall decide on appropriate sanctions for a commercial motor vehicle operator who is found, based on tests conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of law or a Government regulation but who is not under the influence of alcohol or a controlled substance as provided in this chapter.

(g) EFFECT ON STATE AND LOCAL GOVERNMENT REGULATIONS.—A State or local government may not prescribe or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section may not be construed to preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(h) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—In prescribing regulations under this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(i) OTHER REGULATIONS ALLOWED.—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by commercial motor vehicle employees.

(j) APPLICATION OF PENALTIES.—This section does not supersede a penalty applicable to an operator of a commercial motor vehicle under this chapter or another law.

### **§31307. Minimum training requirements for operators of longer combination vehicles**

(a) DEFINITION.—In this section, “longer combination vehicle” means a vehicle consisting of a truck tractor and more than one trailer or semitrailer that operates on the Dwight D. Eisenhower System of Interstate and Defense Highways with a gross vehicle weight of more than 80,000 pounds.

(b) Not later than December 18, 1994, the Secretary of Transportation shall prescribe regulations establishing minimum training requirements for operators of longer combination vehicles. The training shall include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary.

**§ 31308. Commercial driver's license**

After consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on each of the licenses. The standards shall require at a minimum that—

(1) an individual issued a commercial driver's license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(2) the license be tamperproof to the maximum extent practicable; and

(3) the license contain—

(A) the name and address of the individual issued the license and a physical description of the individual;

(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license;

(D) the name of the State that issued the license; and

(E) the dates between which the license is valid.

**§ 31309. Commercial driver's license information system**

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall make an agreement under subsection (b) of this section for the operation of, or establish under subsection (c) of this section, an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The Secretary shall consult with the States in carrying out this section.

(b) STATE AGREEMENTS.—If the Secretary decides that an information system used by a State or States about the driving status of operators of motor vehicles or another State-operated information system could be used to carry out this section, and the State or States agree to the use of the system for carrying out this section, the Secretary may make an agreement with the State or States to use the system as provided in this section and



1 section 31311(c) of this title. An agreement made under this subsection  
 2 shall contain terms the Secretary considers necessary to carry out this chap-  
 3 ter.

4 (c) ESTABLISHMENT BY SECRETARY.—If the Secretary does not make an  
 5 agreement under subsection (b) of this section, the Secretary shall establish  
 6 an information system about the driving status and licensing of operators  
 7 of commercial motor vehicles as provided in this section.

8 (d) CONTENTS.—(1) At a minimum, the information system under this  
 9 section shall include for each operator of a commercial motor vehicle—

10 (A) information the Secretary considers appropriate to ensure identi-  
 11 fication of the operator;

12 (B) the name, address, and physical description of the operator;

13 (C) the social security account number of the operator or other num-  
 14 ber or information the Secretary considers appropriate to identify the  
 15 operator;

16 (D) the name of the State that issued the license to the operator;

17 (E) the dates between which the license is valid; and

18 (F) whether the operator had a commercial motor vehicle driver's li-  
 19 cense revoked, suspended, or canceled by a State, lost the right to oper-  
 20 ate a commercial motor vehicle in a State for any period, or has been  
 21 disqualified from operating a commercial motor vehicle.

22 (2) Not later than December 31, 1990, the Secretary shall prescribe regu-  
 23 lations on minimum uniform standards for a biometric identification system  
 24 to ensure the identification of operators of commercial motor vehicles.

25 (e) AVAILABILITY OF INFORMATION.—(1) On request of a State, the Sec-  
 26 retary or the operator of the information system, as the case may be, may  
 27 make available to the State information in the information system under  
 28 this section.

29 (2) On request of an employee, the Secretary or the operator of the infor-  
 30 mation system, as the case may be, may make available to the employee in-  
 31 formation in the information system about the employee.

32 (3) On request of an employer or prospective employer of an employee  
 33 and after notification to the employee, the Secretary or the operator of the  
 34 information system, as the case may be, may make available to the employer  
 35 or prospective employer information in the information system about the  
 36 employee.

37 (4) On the request of the Secretary, the operator of the information sys-  
 38 tem shall make available to the Secretary information about the driving sta-  
 39 tus and licensing of operators of commercial motor vehicles (including infor-  
 40 mation required by subsection (d)(1) of this section).

(f) FEE SYSTEM.—If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for using the information system. Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the information system in that fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (except the Mass Transit Account).

**§ 31310. Disqualifications**

(a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) FIRST VIOLATION OR COMMITTING FELONY.—(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual; or

(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section).

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) SECOND AND MULTIPLE VIOLATIONS.—(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes; or

(D) committing any combination of single violations or use described in clauses (A)–(C) of this paragraph.

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) SERIOUS TRAFFIC VIOLATIONS.—(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) STATE DISQUALIFICATION.—Notwithstanding subsections (b)–(e) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b)–(e). Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

(g) OUT-OF-SERVICE ORDERS.—(1)(A) To enforce section 392.5 of title 49, Code of Federal Regulations, the Secretary shall prescribe regulations establishing and enforcing an out-of-service period of 24 hours for an individual who violates section 392.5. An individual may not violate an out-of-service order issued under those regulations.

(B) The Secretary shall prescribe regulations establishing and enforcing requirements for reporting out-of-service orders issued under regulations prescribed under subparagraph (A) of this paragraph. Regulations prescribed under this subparagraph shall require at least that an operator of a commercial motor vehicle who is issued an out-of-service order to report the issuance to the individual's employer and to the State that issued the operator a driver's license.

(2) Not later than December 18, 1992, the Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 90 days and liable for a civil penalty of at least \$1,000;

1 (B) an operator of a commercial motor vehicle found to have com-  
2 mitted a 2d violation of an out-of-service order shall be disqualified  
3 from operating such a vehicle for at least one year and not more than  
4 5 years and liable for a civil penalty of at least \$1,000; and

5 (C) an employer that knowingly allows or requires an employee to  
6 operate a commercial motor vehicle in violation of an out-of-service  
7 order shall be liable for a civil penalty of not more than \$10,000.

8 **§ 31311. Requirements for State participation**

9 (a) GENERAL.—To avoid having amounts withheld from apportionment  
10 under section 31314 of this title, a State shall comply with the following  
11 requirements:

12 (1) The State shall adopt and carry out a program for testing and  
13 ensuring the fitness of individuals to operate commercial motor vehicles  
14 consistent with the minimum standards prescribed by the Secretary of  
15 Transportation under section 31305(a) of this title.

16 (2) The State may issue a commercial driver's license to an individ-  
17 ual only if the individual passes written and driving tests for the oper-  
18 ation of a commercial motor vehicle that comply with the minimum  
19 standards.

20 (3) The State shall have in effect and enforce a law providing that  
21 an individual with a blood alcohol concentration level at or above the  
22 level established by section 31310(a) of this title when operating a com-  
23 mercial motor vehicle is deemed to be driving under the influence of  
24 alcohol.

25 (4) The State shall authorize an individual to operate a commercial  
26 motor vehicle only by issuing a commercial driver's license containing  
27 the information described in section 31308(3) of this title.

28 (5) At least 60 days before issuing a commercial driver's license (or  
29 a shorter period the Secretary prescribes by regulation), the State shall  
30 notify the Secretary or the operator of the information system under  
31 section 31309 of this title, as the case may be, of the proposed issuance  
32 of the license and other information the Secretary may require to en-  
33 sure identification of the individual applying for the license.

34 (6) Before issuing a commercial driver's license to an individual, the  
35 State shall request from any other State that has issued a commercial  
36 driver's license to the individual all information about the driving  
37 record of the individual.

38 (7) Not later than 30 days after issuing a commercial driver's li-  
39 cense, the State shall notify the Secretary or the operator of the infor-  
40 mation system under section 31309 of this title, as the case may be,  
41 of the issuance.

1 (8) Not later than 10 days after disqualifying the holder of a com-  
2 mercial driver's license from operating a commercial motor vehicle (or  
3 after revoking, suspending, or canceling the license) for at least 60  
4 days, the State shall notify the Secretary or the operator of the infor-  
5 mation system under section 31309 of this title, as the case may be,  
6 and the State that issued the license, of the disqualification, revocation,  
7 suspension, or cancellation.

8 (9) If an individual operating a commercial motor vehicle violates a  
9 State or local law on motor vehicle traffic control (except a parking vio-  
10 lation) and the individual has a driver's license issued by another State,  
11 the State in which the violation occurred shall notify a State official  
12 designated by the issuing State of the violation not later than 10 days  
13 after the date the individual is found to have committed the violation.

14 (10) The State may not issue a commercial driver's license to an in-  
15 dividual during a period in which the individual is disqualified from op-  
16 erating a commercial motor vehicle or the individual's driver's license  
17 is revoked, suspended, or canceled.

18 (11) The State may issue a commercial driver's license to an individ-  
19 ual who has a commercial driver's license issued by another State only  
20 if the individual first returns the driver's license issued by the other  
21 State.

22 (12) The State may issue a commercial driver's license only to an  
23 individual who operates or will operate a commercial motor vehicle and  
24 is domiciled in the State, except that, under regulations the Secretary  
25 shall prescribe, the State may issue a commercial driver's license to an  
26 individual who operates or will operate a commercial motor vehicle and  
27 is not domiciled in a State that issues commercial drivers' licenses.

28 (13) The State shall impose penalties the State considers appropriate  
29 and the Secretary approves for an individual operating a commercial  
30 motor vehicle when the individual—

31 (A) does not have a commercial driver's license;

32 (B) has a driver's license revoked, suspended, or canceled; or

33 (C) is disqualified from operating a commercial motor vehicle.

34 (14) The State shall allow an individual to operate a commercial  
35 motor vehicle in the State if—

36 (A) the individual has a commercial driver's license issued by  
37 another State under the minimum standards prescribed by the  
38 Secretary under section 31305(a) of this title;

39 (B) the license is not revoked, suspended, or canceled; and

40 (C) the individual is not disqualified from operating a commer-  
41 cial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under section 31310(b)–(e) of this title.

(16)(A) Before issuing a commercial driver’s license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver’s license; or

(iii) has been convicted of an offense specified in section 30304(a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver’s license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(g)(1)(A) and (2) of this title.

(b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver’s license issued to the individual.

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver’s license to an individual, the Secretary or the operator of the information system under section 31309 of this title, as the case may be, shall notify the State whether the individual has a commercial driver’s license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.

**§ 31312. Grants for testing and ensuring the fitness of operators of commercial motor vehicles**

(a) BASIC GRANTS.—(1) The Secretary of Transportation may make a grant to a State under this subsection if the State—

(A) makes an agreement with the Secretary—

(i) to adopt and carry out in the fiscal year in which the grant is made a program for testing and ensuring the fitness of individuals who operate commercial motor vehicles under the minimum

1 standards prescribed by the Secretary under section 31305(a) of  
 2 this title; and

3 (ii) to require that operators of commercial motor vehicles have  
 4 passed written and driving tests that meet the minimum stand-  
 5 ards; and

6 (B) has in effect and enforces in that fiscal year a law providing that  
 7 an individual with a blood alcohol concentration of at least .10 percent  
 8 when operating a commercial motor vehicle is deemed to be driving  
 9 under the influence of alcohol.

10 (2) A State may—

11 (A) administer driving tests referred to in paragraph (1) of this sub-  
 12 section and section 31311(a) of this title; or

13 (B) make an agreement, approved by the Secretary, for the tests to  
 14 be administered by a person (including a department, agency, or in-  
 15 strumentality of a local government) that meets minimum standards  
 16 the Secretary prescribes by regulation if—

17 (i) the agreement allows the Secretary and the State each to  
 18 conduct random examinations, inspections, and audits of the test-  
 19 ing without prior notification; and

20 (ii) the State annually conducts at least one onsite inspection  
 21 of the testing.

22 (3) The Secretary shall decide on the amount of a grant in a fiscal year  
 23 to be made under this subsection to a State eligible to receive the grant in  
 24 the fiscal year. However—

25 (A) a grant to a State under this subsection shall be at least  
 26 \$100,000 in a fiscal year; and

27 (B) to the extent each State grant under this subsection is more  
 28 than \$100,000 in a fiscal year, the Secretary shall ensure that those  
 29 States are treated equitably.

30 (4) A State receiving a grant under this subsection may use the amounts  
 31 provided under the grant only to test operators of commercial motor vehi-  
 32 cles.

33 (5) There is available to the Secretary to carry out this subsection  
 34 \$\_\_\_\_\_ from amounts made available under section 31104 of this  
 35 title for the fiscal year ending September 30, 19\_\_.

36 (b) SUPPLEMENTAL GRANTS.—(1) The Secretary may make a grant  
 37 under this subsection in a fiscal year to a State eligible to receive a grant  
 38 under subsection (a) of this section in that fiscal year. A grant made under  
 39 this subsection shall be used for testing operators of commercial motor vehi-  
 40 cles.

(2) Amounts of grants under this subsection shall be distributed among the States eligible to receive grants under subsection (a) of this section in the fiscal year on the basis of the number of written and driving tests administered, and the number of drivers' licenses for the operation of commercial motor vehicles issued, in the prior fiscal year.

(3) There is available to the Secretary to carry out this subsection \$\_\_\_\_\_ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19\_\_.

(c) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for testing operators of commercial motor vehicles will be maintained at a level at least equal to the average level of that expenditure for its last 2 fiscal years before October 27, 1986.

(d) AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State under this section remain available for obligation by the State for the fiscal year for which the amounts are made available. Any of those amounts not obligated before the last day of that fiscal year are no longer available for obligation by the State and are available to the Secretary to carry out this chapter.

(2) Amounts made available to the Secretary under this section remain available until expended.

(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under this section is a contractual obligation of the Government for payment of the amount of the grant.

(f) TESTING AND FITNESS PROGRAM STUDIES.—In this section, development of a program for testing and ensuring the fitness of individuals who operate commercial motor vehicles includes studies of—

(1) the number of vehicles that will need to be tested under the program in a calendar year;

(2) facilities at which testing of those individuals could be conducted; and

(3) additional resources (including personnel) that will be necessary to conduct the testing.

### **§31313. Grants for issuing commercial drivers' licenses and complying with State participation requirements**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant under this section to a State in a fiscal year if the State makes an agreement with the Secretary to participate in that fiscal year in the commercial driver's license program established by this chapter and the in-



formation system required by section 31309 of this title and to comply with the requirements of section 31311(a) of this title.

(b) AMOUNTS OF GRANTS.—The Secretary shall decide on the amount of a grant in a fiscal year to be made under this section to a State eligible to receive the grant in the fiscal year. However—

(1) a grant to a State under this section shall be at least \$100,000 in a fiscal year; and

(2) to the extent each State grant under this section is more than \$100,000 in a fiscal year, the Secretary shall ensure that those States are treated equitably.

(c) LIMITATION ON USE.—A State receiving a grant under this section may use the amounts provided under the grant only for issuing commercial drivers' licenses and complying with the requirements of section 31311(a) of this title.

(d) AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State under this section remain available for obligation by the State for the fiscal year for which the amounts are made available. Any of those amounts not obligated before the last day of that fiscal year are no longer available for obligation by the State and are available to the Secretary to carry out this chapter.

(2) Amounts made available to the Secretary under this section remain available until expended.

(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under this section is a contractual obligation of the United States Government for payment of the amount of the grant.

(f) AUTHORIZATION.—There is available to the Secretary to carry out this section \$\_\_\_\_\_ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19\_\_.

**§ 31314. Withholding amounts for State noncompliance**

(a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (2), (5), and (6) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(b) SECOND FISCAL YEAR.—The Secretary shall withhold 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (2), (5), and (6) of title 23 on the first day of each fiscal year after the 2d fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(c) AVAILABILITY FOR APPORTIONMENT.—(1) Amounts withheld under this section from apportionment to a State before October 1, 1995, remain available for apportionment to the State as follows:

(A) If the amounts would have been apportioned under section 104(b)(5)(B) of title 23 but for this section, the amounts remain available until the end of the 2d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(B) If the amounts would have been apportioned under section 104(b)(1), (2), or (6) of title 23 but for this section, the amounts remain available until the end of the 3d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(2) Amounts withheld under this section from apportionment to a State after September 30, 1995, are not available for apportionment to the State.

(d) APPORTIONMENT AFTER COMPLIANCE.—(1) If, before the last day of the period for which amounts withheld under this section from apportionment are to remain available for apportionment to a State under subsection (c)(1) of this section, the State substantially complies with all of the requirements of section 31311(a) of this title for a period of 365 days, the Secretary, on the day following the last day of that period, shall apportion to the State the withheld amounts remaining available for apportionment to that State.

(2) Amounts apportioned under paragraph (1) of this subsection remain available for expenditure until the end of the 3d fiscal year following the fiscal year in which the amounts are apportioned. Amounts not obligated at the end of that period lapse or, for amounts apportioned under section 104(b)(5) of title 23, lapse and are available for projects under section 118(b) of title 23.

(e) LAPSE.—If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.

### **§ 31315. Waiver authority**

After notice and an opportunity for comment, the Secretary of Transportation may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A

waiver under this section shall be published in the Federal Register with reasons for the waiver.

**§31316. Limitation on statutory construction**

This chapter does not affect the authority of the Secretary of Transportation to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or a lesser gross vehicle weight rating the Secretary decides is appropriate under section 31301(4)(A) of this title.

**§31317. Procedure for prescribing regulations**

Regulations prescribed by the Secretary of Transportation to carry out this chapter (except section 31307) shall be prescribed under section 553 of title 5 without regard to sections 556 and 557 of title 5.

**CHAPTER 315—MOTOR CARRIER SAFETY**

Sec.

31501. Definitions.

31502. Requirements for qualifications, hours of service, safety, and equipment standards.

31503. Research, investigation, and testing.

31504. Identification of motor vehicles.

**§31501. Definitions**

In this chapter—

(1) “migrant worker” means an individual going to or from employment in agriculture as provided under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) or section 203(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)).

(2) “motor carrier”, “motor common carrier”, “motor private carrier”, “motor vehicle”, and “United States” have the same meanings given those terms in section 10102 of this title.

(3) “motor carrier of migrant workers”—

(A) means a person (except a motor common carrier) providing transportation referred to in section 10521(a) of this title by a motor vehicle (except a passenger automobile or station wagon) for at least 3 migrant workers at a time to or from their employment; but

(B) does not include a migrant worker providing transportation for migrant workers and their immediate families.

**§31502. Requirements for qualifications, hours of service, safety, and equipment standards**

(a) APPLICATION.—This section applies to transportation—

(1) described in sections 10521 and 10522 of this title; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

1 (b) MOTOR CARRIER AND PRIVATE MOTOR CARRIER REQUIREMENTS.—  
 2 The Secretary of Transportation may prescribe requirements for—

3 (1) qualifications and maximum hours of service of employees of, and  
 4 safety of operation and equipment of, a motor carrier; and

5 (2) qualifications and maximum hours of service of employees of, and  
 6 standards of equipment of, a motor private carrier, when needed to  
 7 promote safety of operation.

8 (c) MIGRANT WORKER MOTOR CARRIER REQUIREMENTS.—The Secretary  
 9 may prescribe requirements for the comfort of passengers, qualifications and  
 10 maximum hours of service of operators, and safety of operation and equip-  
 11 ment of a motor carrier of migrant workers. The requirements only apply  
 12 to a carrier transporting a migrant worker—

13 (1) at least 75 miles; and

14 (2) across the boundary of a State, territory, or possession of the  
 15 United States.

16 (d) CONSIDERATIONS.—Before prescribing or revising any requirement  
 17 under this section, the Secretary shall consider the costs and benefits of the  
 18 requirement.

19 **§ 31503. Research, investigation, and testing**

20 (a) GENERAL AUTHORITY.—The Secretary of Transportation may inves-  
 21 tigate and report on the need for regulation by the United States Govern-  
 22 ment of sizes, weight, and combinations of motor vehicles and qualifications  
 23 and maximum hours of service of employees of a motor carrier subject to  
 24 subchapter II of chapter 105 of this title and a motor private carrier. The  
 25 Secretary shall use the services of each department, agency, or instrumen-  
 26 tality of the Government and each organization of motor carriers having  
 27 special knowledge of a matter being investigated.

28 (b) USE OF SERVICES.—In carrying out this chapter, the Secretary may  
 29 use the services of a department, agency, or instrumentality of the Govern-  
 30 ment having special knowledge about safety, to conduct scientific and tech-  
 31 nical research, investigation, and testing when necessary to promote safety  
 32 of operation and equipment of motor vehicles. The Secretary may reimburse  
 33 the department, agency, or instrumentality for the services provided.

34 **§ 31504. Identification of motor vehicles**

35 (a) GENERAL AUTHORITY.—The Secretary of Transportation may—

36 (1) issue and require the display of an identification plate on a motor  
 37 vehicle used in transportation provided by a motor private carrier and  
 38 a motor carrier of migrant workers subject to section 31502(c) of this  
 39 title, except a motor contract carrier; and

40 (2) require each of those motor private carriers and motor carriers  
 41 of migrant workers to pay the reasonable cost of the plate.

(b) LIMITATION.—A motor private carrier or a motor carrier of migrant workers may use an identification plate only as authorized by the Secretary.

**CHAPTER 317—PARTICIPATION IN INTERNATIONAL  
REGISTRATION PLAN AND INTERNATIONAL FUEL TAX  
AGREEMENT**

Sec.

31701. Definitions.

31702. Working group.

31703. Grants.

31704. Vehicle registration.

31705. Fuel use tax.

31706. Enforcement.

31707. Limitations on statutory construction.

31708. Authorization of appropriations.

**§31701. Definitions**

In this chapter—

(1) “commercial motor vehicle”, with respect to—

(A) the International Registration Plan, has the same meaning given the term “apportionable vehicle” under the Plan; and

(B) the International Fuel Tax Agreement, has the same meaning given the term “qualified motor vehicle” under the Agreement.

(2) “fuel use tax” means a tax imposed on or measured by the consumption of fuel in a motor vehicle.

(3) “International Fuel Tax Agreement” means the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers, developed under the auspices of the National Governors’ Association.

(4) “International Registration Plan” means the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.

(5) “Regional Fuel Tax Agreement” means the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers in the States of Maine, Vermont, and New Hampshire.

(6) “State” means the 48 contiguous States and the District of Columbia.

**§31702. Working group**

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors’ Association, the American Association of Motor Vehicle Administrators, the National Conference of State Legislatures, the Federation of Tax Administrators, and the Board of Directors for the International Fuel Tax Agreement, and a representative of the Regional Fuel Tax Agreement.

(b) PURPOSES.—The purposes of the working group are—

(1) to propose procedures to resolve disputes among States participating in the International Registration Plan and among States participating in the International Fuel Tax Agreement, including designating the Secretary or any other person to resolve the disputes; and

(2) to provide technical assistance to States participating or seeking to participate in the Plan or Agreement.

(c) CONSULTATION REQUIREMENT.—In carrying out subsection (b) of this section, the working group shall consult with members of the motor carrier industry.

(d) REPORT.—(1) Not later than December 18, 1993, the working group shall submit a report to—

(A) the Secretary;

(B) the Committee on Commerce, Science, and Transportation of the Senate;

(C) the Committee on Public Works and Transportation of the House of Representatives;

(D) the Committee on the Judiciary of the House of Representatives;

(E) the States participating in the International Registration Plan; and

(F) the States participating in the International Fuel Tax Agreement.

(2) The report shall contain a detailed statement of the working group's findings and conclusions and its joint recommendations about the matters referred to in subsection (b) of this section. After submitting the report, the working group periodically may review and modify the findings and conclusions and the joint recommendations as appropriate and submit a report containing the modifications to the Secretary and the committees specified in paragraph (1) of this subsection.

(e) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.

### **§ 31703. Grants**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants to States and appropriate persons to facilitate participation in the International Registration Plan and the International Fuel Tax Agreement and to make administrative improvements in any other base State fuel use tax agreement in existence as of January 1, 1991. A grant may include amounts for technical assistance, personnel training, travel costs, and technology and equipment associated with the participation.

(b) CONTRACTUAL OBLIGATION.—Approval by the Secretary of a grant with amounts made available under this section is a contractual obligation

of the United States Government for payment of the Government's share of the grant.

**§31704. Vehicle registration**

After September 30, 1996, a State that is not participating in the International Registration Plan may not establish, maintain, or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that State of a commercial motor vehicle that is not registered under the laws of the State, if the vehicle is registered under the laws of a State participating in the Plan.

**§31705. Fuel use tax**

(a) REPORTING REQUIREMENTS.—After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that has a fuel use tax reporting requirement (including any tax reporting form) only if the requirement conforms with the International Fuel Tax Agreement.

(b) PAYMENT.—After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that provides for the payment of a fuel use tax only if the law or regulation conforms with the International Fuel Tax Agreement as it applies to collection of a fuel use tax by a single base State and proportional sharing of fuel use taxes charged among the States where a commercial motor vehicle is operated.

(c) LIMITATION.—If the International Fuel Tax Agreement is amended, a State not participating in the Agreement when the amendment is made is not subject to the conformity requirements of subsections (a) and (b) of this section in regard to the amendment until after a reasonable time, but not earlier than the expiration of—

(1) the 365-day period beginning on the first day that States participating in the Agreement are required to comply with the amendment; or

(2) the 365-day period beginning on the day the relevant office of the State receives written notice of the amendment from the Secretary of Transportation.

(d) NONAPPLICATION.—This section does not apply to a State that was participating in the Regional Fuel Tax Agreement on January 1, 1991, and that continues to participate in that Agreement after that date.

**§31706. Enforcement**

(a) CIVIL ACTIONS.—On request of the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with sections 31704 and 31705 of this title.

(b) VENUE.—An action under this section may be brought only in the State in which an order is required to enforce compliance.

(c) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

(1) shall issue a temporary restraining order or a preliminary or permanent injunction; and

(2) may require by the injunction that the State or any person comply with sections 31704 and 31705 of this title.

### **§ 31707. Limitations on statutory construction**

Sections 31704 and 31705 of this title do not limit the amount of money a State may charge for registration of a commercial motor vehicle or the amount of any fuel use tax a State may impose.

### **§ 31708. Authorization of appropriations**

(a) GENERAL.—From amounts made available under section 31104 of this title, the Secretary of Transportation shall provide the following amounts for each of the fiscal years ending September 30, 1993-1997:

(1) \$1,000,000 for activities of the working group under section 31702 of this title.

(2) \$5,000,000 for grants under section 31703 of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

## **PART C—INFORMATION, STANDARDS, AND REQUIREMENTS**

### **CHAPTER 321—GENERAL**

Sec.

32101. Definitions.

32102. Authorization of appropriations.

### **§ 32101. Definitions**

In this part (except section 32304 and chapter 329)—

(1) “bumper standard” means a minimum performance standard that substantially reduces—

(A) the damage to the front or rear end of a passenger motor vehicle from a low-speed collision (including a collision with a fixed barrier) or from towing the vehicle; or

(B) the cost of repairing the damage.

(2) “insurer” means a person in the business of issuing, or reinsuring any part of, a passenger motor vehicle insurance policy.

(3) “interstate commerce” means commerce between a place in a State and—

(A) a place in another State; or

(B) another place in the same State through another State.

(4) “make”, when describing a passenger motor vehicle, means the trade name of the manufacturer of the vehicle.



- 1           (5) “manufacturer” means a person—  
2               (A) manufacturing or assembling passenger motor vehicles or  
3               passenger motor vehicle equipment; or  
4               (B) importing motor vehicles or motor vehicle equipment for re-  
5               sale.  
6           (6) “model”, when describing a passenger motor vehicle, means a  
7               category of passenger motor vehicles based on the size, style, and type  
8               of a make of vehicle.  
9           (7) “motor vehicle” means a vehicle driven or drawn by mechanical  
10           power and manufactured primarily for use on public streets, roads, and  
11           highways, but does not include a vehicle operated only on a rail line.  
12           (8) “motor vehicle accident” means an accident resulting from the  
13           maintenance or operation of a passenger motor vehicle or passenger  
14           motor vehicle equipment.  
15           (9) “multipurpose passenger vehicle” means a passenger motor vehi-  
16           cle constructed on a truck chassis or with special features for occa-  
17           sional off-road operation.  
18           (10) “passenger motor vehicle” means a motor vehicle with motive  
19           power designed to carry not more than 12 individuals, but does not in-  
20           clude—  
21               (A) a motorcycle; or  
22               (B) a truck not designed primarily to carry its operator or pas-  
23               sengers.  
24           (11) “passenger motor vehicle equipment” means—  
25               (A) a system, part, or component of a passenger motor vehicle  
26               as originally made;  
27               (B) a similar part or component made or sold for replacement  
28               or improvement of a system, part, or component, or as an acces-  
29               sory or addition to a passenger motor vehicle; or  
30               (C) a device made or sold for use in towing a passenger motor  
31               vehicle.  
32           (12) “State” means a State of the United States, the District of Co-  
33           lumbia, Puerto Rico, the Northern Mariana Islands, Guam, American  
34           Samoa, and the Virgin Islands.  
35           (13) “United States district court” means a district court of the  
36           United States, a United States court for Guam, the Virgin Islands, and  
37           American Samoa, and the district court for the Northern Mariana Is-  
38           lands.

**§ 32102. Authorization of appropriations**

The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this part:

- (1) \$6,731,430 for the fiscal year ending September 30, 1993.
- (2) \$6,987,224 for the fiscal year ending September 30, 1994.
- (3) \$7,252,739 for the fiscal year ending September 30, 1995.

**CHAPTER 323—CONSUMER INFORMATION**

Sec.

32301. Definitions.
32302. Passenger motor vehicle information.
32303. Insurance information.
32304. Passenger motor vehicle country of origin labeling.
32305. Information and assistance from other departments, agencies, and instrumentalities.
32306. Personnel.
32307. Investigative powers.
32308. General prohibitions, civil penalty, and enforcement.
32309. Criminal penalty for labeling violations.

**§ 32301. Definitions**

In this chapter—

- (1) “crashworthiness” means the protection a passenger motor vehicle gives its passengers against personal injury or death from a motor vehicle accident.
- (2) “damage susceptibility” means the susceptibility of a passenger motor vehicle to damage in a motor vehicle accident.

**§ 32302. Passenger motor vehicle information**

(a) INFORMATION PROGRAM.—The Secretary of Transportation shall maintain a program for developing the following information on passenger motor vehicles:

- (1) crashworthiness.
- (2) damage susceptibility.
- (3) the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems.
- (4) vehicle operating costs dependent on the characteristics referred to in clauses (1)–(3) of this subsection, including insurance information obtained under section 32303 of this title.

(b) DISTRIBUTION BY SECRETARY.—To assist a consumer in buying a passenger motor vehicle, the Secretary shall distribute to the public information developed under subsection (a) of this section. The information shall be in a simple and understandable form that allows comparison of the characteristics referred to in subsection (a)(1)–(3) of this section among the makes and models of passenger motor vehicles. The Secretary may require passenger motor vehicle dealers to distribute the information to prospective buyers.

(c) DISTRIBUTION BY DEALERS.—The Secretary shall prescribe regulations that require passenger motor vehicle dealers to distribute to prospective buyers information the Secretary develops and provides to the dealers that compares insurance costs for different makes and models of passenger motor vehicles based on crashworthiness and damage susceptibility.

**§ 32303. Insurance information**

(a) GENERAL REPORTS AND INFORMATION REQUIREMENTS.—(1) In carrying out this chapter, the Secretary of Transportation may require an insurer, or a designated agent of the insurer, to make reports and provide the Secretary with information. The reports and information may include accident claim information by make, model, and model year of passenger motor vehicle about the kind and extent of—

(A) physical damage and repair costs; and

(B) personal injury.

(2) In deciding which reports and information are to be provided under this subsection, the Secretary shall—

(A) consider the cost of preparing and providing the reports and information;

(B) consider the extent to which the reports and information will contribute to carrying out this chapter; and

(C) consult with State authorities and public and private agencies the Secretary considers appropriate.

(3) To the extent possible, the Secretary shall obtain reports and information under this subsection on a voluntary basis.

(b) REQUESTED INFORMATION ON CRASHWORTHINESS, DAMAGE SUSCEPTIBILITY, AND REPAIR AND PERSONAL INJURY COST.—When requested by the Secretary, an insurer shall give the Secretary information—

(1) about the extent to which the insurance premiums charged by the insurer are affected by crashworthiness, damage susceptibility, and the cost of repair and personal injury, for each make and model of passenger motor vehicle; and

(2) available to the insurer about the effect of crashworthiness, damage susceptibility, and the cost of repair and personal injury for each make and model of passenger motor vehicle on the risk incurred by the insurer in insuring that make and model.

(c) DISCLOSURE.—In distributing information received under this section, the Secretary may disclose identifying information about a person that may be an insured, a claimant, a passenger, an owner, a witness, or an individual involved in a motor vehicle accident, only with the consent of the person.

**§ 32304. Passenger motor vehicle country of origin labeling**

(a) DEFINITIONS.—In this section—

1           (1) “allied supplier” means a supplier of passenger motor vehicle  
2 equipment that is wholly owned by the manufacturer, or if a joint ven-  
3 ture vehicle assembly arrangement, a supplier that is wholly owned by  
4 one member of the joint venture arrangement.

5           (2)(A) “carline”—

6               (i) means a name given a group of passenger motor vehicles  
7 that has a degree of commonality in construction such as body and  
8 chassis;

9               (ii) does not consider a level of decor or opulence; and

10              (iii) except for light duty trucks, is not generally distinguished  
11 by characteristics such as roof line, number of doors, seats, or  
12 windows; and

13           (B) light duty trucks are carlines different from other passenger  
14 motor vehicles.

15           (3) “country of origin”, when referring to the origin of an engine  
16 or transmission, means the country from which the largest share of the  
17 dollar value added of an engine or transmission has originated—

18               (A) with the United States and Canada treated as separate  
19 countries; and

20               (B) the estimate of the percentage of the dollar value shall be  
21 based on the purchase price of direct materials as received at indi-  
22 vidual engine or transmission plants of engines of the same dis-  
23 placement and transmissions of the same transmission type.

24           (4) “dealer” means a person residing or located in the United  
25 States, including the District of Columbia or a territory or possession  
26 of the United States, and engaged in selling or distributing new pas-  
27 senger motor vehicles to the ultimate purchaser.

28           (5) “final assembly place” means the plant, factory, or other place  
29 at which a new passenger motor vehicle is produced or assembled by  
30 a manufacturer and from which the vehicle is delivered to a dealer or  
31 importer with all component parts necessary for the mechanical oper-  
32 ation of the vehicle included with the vehicle, whether or not the com-  
33 ponent parts are permanently installed in or on the vehicle.

34           (6) “foreign content” means passenger motor vehicle equipment that  
35 is not of United States/Canadian origin.

36           (7) “manufacturer” means a person—

37               (A) engaged in manufacturing or assembling new passenger  
38 motor vehicles;

39               (B) importing new passenger motor vehicles for resale; or

1 (C) acting for and under the control of such a manufacturer,  
2 assembler, or importer in connection with the distribution of new  
3 passenger motor vehicles.

4 (8) “new passenger motor vehicle” means a passenger motor vehicle  
5 for which a manufacturer, distributor, or dealer has never transferred  
6 the equitable or legal title to the vehicle to an ultimate purchaser.

7 (9) “of United States/Canadian origin”, when referring to passenger  
8 motor vehicle equipment, means—

9 (A) for an outside supplier, passenger motor vehicle equipment  
10 whose purchase price contains at least 70 percent value added in  
11 the United States and Canada; and

12 (B) for an allied supplier, that part of the individual passenger  
13 motor vehicle equipment whose purchase price the manufacturer  
14 determines remains after subtracting the total of the purchase  
15 prices of all material of foreign content purchased from outside  
16 suppliers, with the determination of the United States/Canadian  
17 origin or of the foreign content from outside suppliers being con-  
18 sistent with subclause (A) of this clause.

19 (10) “outside supplier” means a supplier of passenger motor vehicle  
20 equipment to a manufacturer’s allied supplier or a person other than  
21 an allied supplier who ships directly to the manufacturer’s final assem-  
22 bly place.

23 (11) “passenger motor vehicle” means a motor vehicle with motive  
24 power, manufactured primarily for use on public streets, roads, and  
25 highways, and designed to carry not more than 12 individuals—

26 (A) including a multipurpose vehicle or light duty truck when  
27 the vehicle or truck is rated at not more than 8,500 pounds gross  
28 vehicle weight; but

29 (B) not including—

30 (i) a motorcycle;

31 (ii) a truck not designed primarily to carry its operator or  
32 passengers; or

33 (iii) a vehicle operated only on a rail line.

34 (12) “passenger motor vehicle equipment”—

35 (A) means a system, subassembly, or component received at the  
36 final vehicle assembly place for installation on, or attachment to,  
37 a passenger motor vehicle at the time of its first shipment by the  
38 manufacturer to a dealer for sale to an ultimate purchaser; but

39 (B) does not include minor parts (including nuts, bolts, clips,  
40 screws, pins, braces, and other attachment hardware) and other

similar items the Secretary of Transportation may prescribe by regulation after consulting with manufacturers and labor.

(13) “percentage (by value)”, when referring to passenger motor vehicle equipment of United States/Canadian origin, means the percentage remaining after subtracting the percentage (by value) of passenger motor vehicle equipment that is not of United States/Canadian origin that will be installed or included on those vehicles produced in a carline, from 100 percent—

(A) with value being expressed in terms of the purchase price;

and

(B) for outside suppliers and allied suppliers, the value used is the purchase price of the equipment paid at the final assembly place.

(14) “State” means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Canal Zone, American Samoa, and the Virgin Islands.

(15) “value added in the United States and Canada” means a percentage determined by subtracting the total purchase price of foreign content from the total purchase price, and dividing the remainder by the total purchase price, excluding costs incurred or profits made at the final assembly place and beyond (including advertising, assembly, labor, interest payments, and profits), with the following groupings being used:

(A) engines of same displacement produced at the same plant.

(B) transmissions of the same type produced at the same plant.

(b) MANUFACTURER REQUIREMENT.—(1) Each manufacturer of a new passenger motor vehicle manufactured after September 30, 1994, and distributed in commerce for sale in the United States, shall establish each year for each model year and cause to be attached in a prominent place on each of those vehicles, at least one label. The label shall contain the following information:

(A) the percentage (by value) of passenger motor vehicle equipment of United States/Canadian origin installed on vehicles in the carline to which that vehicle belongs, followed by the words “U.S./Canadian content”.

(B) the final assembly place for that vehicle by city, State (where appropriate) and country.

(C) if at least 15 percent (by value) of equipment installed on passenger motor vehicles in a carline originated in a country other than United States and Canada, the names of at least the 2 countries in

1        which the greatest amount (by value) of that equipment originated and  
2        the percentage (by value) of the equipment originating in each country.

3        (D) the country of origin of the engine and the transmission for each  
4        vehicle.

5        (2) At the beginning of each model year, each manufacturer shall estab-  
6        lish the percentages required for each carline to be indicated on the label  
7        under this subsection. Those percentages are applicable to that carline for  
8        the entire model year. A manufacturer may round those percentages to the  
9        nearest 5 percent.

10       (3) A manufacturer complying with the requirement of paragraph (1)(B)  
11       of this subsection satisfies the disclosure requirement of section 3(b) of the  
12       Automobile Information Disclosure Act (15 U.S.C. 1232(b)).

13       (c) DEALER REQUIREMENT.—Each dealer engaged in the sale or dis-  
14       tribution of a new passenger motor vehicle manufactured after September  
15       30, 1994, shall cause to be maintained on that vehicle the label required  
16       to be attached to that vehicle under subsection (b) of this section.

17       (d) FORM AND CONTENT OF LABEL.—The Secretary of Transportation  
18       shall prescribe by regulation the form and content of the label required  
19       under subsection (b) of this section and the way and location in which the  
20       label is attached. The Secretary shall permit a manufacturer to comply with  
21       this section by allowing the manufacturer to disclose the information re-  
22       quired under subsection (b)(1) on the label required by section 3 of the  
23       Automobile Information Disclosure Act (15 U.S.C. 1232), on the label re-  
24       quired by section 32908 of this title, or on a separate label that is readily  
25       visible.

26       (e) REGULATIONS.—In consultation with the Secretaries of Commerce  
27       and the Treasury, the Secretary of Transportation shall prescribe regula-  
28       tions necessary to carry out this section, including regulations establishing  
29       a procedure to verify the label information required under subsection (b)(1)  
30       of this section. Those regulations shall provide the ultimate purchaser of a  
31       new passenger motor vehicle with the best and most understandable infor-  
32       mation possible about the foreign content and United States/Canadian ori-  
33       gin of the equipment of the vehicles without imposing costly and unneces-  
34       sary burdens on the manufacturers. The Secretary of Transportation shall  
35       prescribe the regulations promptly to provide adequate lead time for each  
36       manufacturer to comply with this section. The regulations shall include pro-  
37       visions applicable to outside suppliers and allied suppliers to require those  
38       suppliers to certify whether passenger motor vehicle equipment provided by  
39       those suppliers is of United States origin, of United States/Canadian origin,  
40       or of foreign content and to provide other information the Secretary of  
41       Transportation decides is necessary to allow each manufacturer to comply

1 reasonably with this section and to rely on that certification and informa-  
2 tion.

3 (f) PREEMPTION.—(1) When a label content requirement prescribed  
4 under this section is in effect, a State or a political subdivision of a State  
5 may not adopt or enforce a law or regulation related to the content of vehi-  
6 cles covered by a requirement under this section.

7 (2) A State or a political subdivision of a State may prescribe require-  
8 ments related to the content of passenger motor vehicles obtained for its  
9 own use.

10 **§ 32305. Information and assistance from other depart-**  
11 **ments, agencies, and instrumentalities**

12 (a) AUTHORITY TO REQUEST.—The Secretary of Transportation may re-  
13 quest information necessary to carry out this chapter from a department,  
14 agency, or instrumentality of the United States Government. The head of  
15 the department, agency, or instrumentality shall provide the information.

16 (b) DETAILING PERSONNEL.—The head of a department, agency, or in-  
17 strumentality may detail, on a reimbursable basis, personnel to assist the  
18 Secretary in carrying out this chapter.

19 **§ 32306. Personnel**

20 (a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary  
21 of Transportation may—

22 (1) appoint and fix the pay of employees without regard to the provi-  
23 sions of title 5 governing appointment in the competitive service and  
24 chapter 51 and subchapter III of chapter 53 of title 5; and

25 (2) make contracts with persons for research and preparation of re-  
26 ports.

27 (b) STATUS OF ADVISORY COMMITTEE MEMBERS.—A member of an ad-  
28 visory committee appointed under section 325 of this title to carry out this  
29 chapter is a special United States Government employee under chapter 11  
30 of title 18.

31 **§ 32307. Investigative powers**

32 (a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary  
33 of Transportation may—

34 (1) inspect and copy records of any person at reasonable times;

35 (2) order a person to file written reports or answers to specific ques-  
36 tions, including reports or answers under oath; and

37 (3) conduct hearings, administer oaths, take testimony, and require  
38 (by subpoena or otherwise) the appearance and testimony of witnesses  
39 and the production of records the Secretary considers advisable.



(b) WITNESS FEES AND MILEAGE.—A witness summoned under subsection (a) of this section is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(c) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpoena or order of the Secretary under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(d) CONFIDENTIALITY OF INFORMATION.—Information obtained by the Secretary under this section related to a confidential matter referred to in section 1905 of title 18 may be disclosed only to another officer or employee of the United States Government for use in carrying out this chapter. This subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

**§ 32308. General prohibitions, civil penalty, and enforcement**

(a) PROHIBITIONS.—A person may not—

(1) fail to provide the Secretary of Transportation with information requested by the Secretary in carrying out this chapter; or

(2) fail to comply with applicable regulations prescribed by the Secretary in carrying out this chapter.

(b) CIVIL PENALTY.—(1) A person that violates subsection (a) of this section is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation. Each failure to provide information or comply with a regulation in violation of subsection (a) is a separate violation. The maximum penalty under this subsection for a related series of violations is \$400,000.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section.

(3) In determining the amount of a penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a civil action in a United States district court to enjoin a violation of subsection (a) of this section.

(2) When practicable, the Secretary shall—

1 (A) notify a person against whom an action under this subsection  
2 is planned;

3 (B) give the person an opportunity to present that person's views;  
4 and

5 (C) give the person a reasonable opportunity to comply.

6 (3) The failure of the Secretary to comply with paragraph (2) of this sub-  
7 section does not prevent a court from granting appropriate relief.

8 (d) VENUE AND SERVICE.—A civil action under this section may be  
9 brought in the judicial district in which the violation occurred or the defend-  
10 ant is found, resides, or does business. Process in the action may be served  
11 in any other judicial district in which the defendant resides or is found. A  
12 subpoena for a witness in the action may be served in any judicial district.

13 **§ 32309. Criminal penalty for labeling violations**

14 (a) DEFINITIONS.—The definitions in section 32304 of this title apply to  
15 this section.

16 (b) PENALTIES.—A manufacturer of a passenger motor vehicle distrib-  
17 uted in commerce for sale in the United States that willfully fails to attach  
18 the label required under section 32304 of this title to a new passenger  
19 motor vehicle that the manufacturer manufactures or imports, or a dealer  
20 that fails to maintain that label as required under section 32304, is liable  
21 to the United States Government for a civil penalty of not more than  
22 \$1,000 for each violation. Each failure to attach or maintain that label for  
23 each vehicle is a separate violation.

24 **CHAPTER 325—BUMPER STANDARDS**

Sec.

32501. Purpose.

32502. Bumper standards.

32503. Judicial review of bumper standards.

32504. Certificates of compliance.

32505. Information and compliance requirements.

32506. Prohibited acts.

32507. Penalties and enforcement.

32508. Civil actions by owners of passenger motor vehicles.

32509. Information and assistance from other departments, agencies, and instrumentalities.

32510. Annual report.

32511. Relationship to other motor vehicle standards.

25 **§ 32501. Purpose**

26 The purpose of this chapter is to reduce economic loss resulting from  
27 damage to passenger motor vehicles involved in motor vehicle accidents by  
28 providing for the maintenance and enforcement of bumper standards.

29 **§ 32502. Bumper standards**

30 (a) GENERAL REQUIREMENTS AND NONAPPLICATION.—The Secretary of  
31 Transportation shall prescribe by regulation bumper standards for pas-  
32 senger motor vehicles and may prescribe by regulation bumper standards for  
33 passenger motor vehicle equipment manufactured in, or imported into, the

1 United States. A standard does not apply to a passenger motor vehicle or  
2 passenger motor vehicle equipment—

3 (1) intended only for export;

4 (2) labeled for export on the vehicle or equipment and the outside  
5 of any container of the vehicle or equipment; and

6 (3) exported.

7 (b) LIMITATIONS.—A standard under this section—

8 (1) may not conflict with a motor vehicle safety standard prescribed  
9 under chapter 301 of this title;

10 (2) may not specify a dollar amount for the cost of repairing damage  
11 to a passenger motor vehicle; and

12 (3) to the greatest practicable extent, may not preclude the attach-  
13 ment of a detachable hitch.

14 (c) EXEMPTIONS.—For good cause, the Secretary may exempt from any  
15 part of a standard—

16 (1) a multipurpose passenger vehicle; or

17 (2) a make, model, or class of a passenger motor vehicle manufac-  
18 tured for a special use, if the standard would interfere unreasonably  
19 with the special use of the vehicle.

20 (d) COST REDUCTION AND CONSIDERATIONS.—When prescribing a  
21 standard under this section, the Secretary shall design the standard to ob-  
22 tain the maximum feasible reduction of costs to the public, considering—

23 (1) the costs and benefits of carrying out the standard;

24 (2) the effect of the standard on insurance costs and legal fees and  
25 costs;

26 (3) savings in consumer time and inconvenience; and

27 (4) health and safety, including emission standards.

28 (e) PROCEDURES.—Section 553 of title 5 applies to a standard prescribed  
29 under this section. However, the Secretary shall give an interested person  
30 an opportunity to make oral and written presentations of information, views,  
31 and arguments. A transcript of each oral presentation shall be kept. Under  
32 conditions prescribed by the Secretary, the Secretary may conduct a hearing  
33 to resolve an issue of fact material to a standard.

34 (f) EFFECTIVE DATE.—The Secretary shall prescribe an effective date for  
35 a standard under this section. That date may not be earlier than the date  
36 the standard is prescribed nor later than 18 months after the date the  
37 standard is prescribed. However, the Secretary may prescribe a later date  
38 when the Secretary submits to Congress and publishes the reasons for the  
39 later date. A standard only applies to a passenger motor vehicle or pas-  
40 senger motor vehicle equipment manufactured on or after the effective date.

(g) RESEARCH.—The Secretary shall conduct research necessary to carry out this chapter.

**§ 32503. Judicial review of bumper standards**

(a) FILING AND VENUE.—A person that may be adversely affected by a standard prescribed under section 32502 of this title may apply for review of the standard by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 59 days after the standard is prescribed.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the standard was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside a standard, and the additional evidence with the court.

(d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under this section is in addition to any other remedies provided by law.

**§ 32504. Certificates of compliance**

Under regulations prescribed by the Secretary of Transportation, a manufacturer or distributor of a passenger motor vehicle or passenger motor vehicle equipment subject to a standard prescribed under section 32502 of this title shall give the distributor or dealer at the time of delivery a certificate that the vehicle or equipment complies with the standard.

**§ 32505. Information and compliance requirements**

(a) GENERAL AUTHORITY.—(1) To enable the Secretary of Transportation to decide whether a manufacturer of passenger motor vehicles or passenger motor vehicle equipment is complying with this chapter and standards prescribed under this chapter, the Secretary may require the manufacturer to—

(A) keep records;

(B) make reports;

1 (C) provide items and information, including vehicles and equipment  
 2 for testing at a negotiated price not more than the manufacturer's cost;  
 3 and

4 (D) allow an officer or employee designated by the Secretary to in-  
 5 spect vehicles and relevant records of the manufacturer.

6 (2) To enforce this chapter, an officer or employee designated by the Sec-  
 7 retary, on presenting appropriate credentials and a written notice to the  
 8 owner, operator, or agent in charge, may inspect a facility in which pas-  
 9 senger motor vehicles or passenger motor vehicle equipment is manufac-  
 10 tured, held for introduction in interstate commerce, or held for sale after  
 11 introduction in interstate commerce. An inspection shall be conducted at a  
 12 reasonable time, in a reasonable way, and with reasonable promptness.

13 (b) POWERS OF SECRETARY AND CIVIL ACTIONS TO ENFORCE.—(1) In  
 14 carrying out this chapter, the Secretary may—

15 (A) inspect and copy records of any person at reasonable times;

16 (B) order a person to file written reports or answers to specific ques-  
 17 tions, including reports or answers under oath; and

18 (C) conduct hearings, administer oaths, take testimony, and require  
 19 (by subpoena or otherwise) the appearance and testimony of witnesses  
 20 and the production of records the Secretary considers advisable.

21 (2) A witness summoned under this subsection is entitled to the same fee  
 22 and mileage the witness would have been paid in a court of the United  
 23 States.

24 (3) A civil action to enforce a subpoena or order of the Secretary under  
 25 this subsection may be brought in the United States district court for the  
 26 judicial district in which the proceeding by the Secretary was conducted.  
 27 The court may punish a failure to obey an order of the court to comply  
 28 with the subpoena or order of the Secretary as a contempt of court.

29 (c) CONFIDENTIALITY OF INFORMATION.—(1) Information obtained by  
 30 the Secretary under this chapter related to a confidential matter referred  
 31 to in section 1905 of title 18 may be disclosed only—

32 (A) to another officer or employee of the United States Government  
 33 for use in carrying out this chapter; or

34 (B) in a proceeding under this chapter.

35 (2) This subsection does not authorize information to be withheld from  
 36 a committee of Congress authorized to have the information.

37 (3) Subject to paragraph (1) of this subsection, the Secretary, on request,  
 38 shall make available to the public at cost information the Secretary submits  
 39 or receives in carrying out this chapter.

40 **§ 32506. Prohibited acts**

41 (a) GENERAL.—Except as provided in this section, a person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date an applicable standard under section 32502 of this title takes effect, unless it conforms to the standard;

(2) fail to comply with an applicable regulation prescribed by the Secretary of Transportation under this chapter;

(3) fail to keep records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter or a regulation prescribed under this chapter; or

(4) fail to provide the certificate required by section 32504 of this title, or provide a certificate that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a passenger motor vehicle or passenger motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale (but this clause does not prohibit a standard from requiring that a vehicle or equipment be manufactured to comply with the standard over a specified period of operation or use); or

(2) a person—

(A) establishing that the person had no reason to know, by exercising reasonable care, that the vehicle or equipment does not comply with the standard; or

(B) holding, without knowing about a noncompliance and before that first purchase, a certificate issued under section 32504 of this title stating that the vehicle or equipment complies with the standard.

(c) IMPORTING NONCOMPLYING VEHICLES AND EQUIPMENT.—(1) The Secretaries of Transportation and the Treasury may prescribe joint regulations authorizing a passenger motor vehicle or passenger motor vehicle equipment not complying with a standard prescribed under section 32502 of this title to be imported into the United States subject to conditions (including providing a bond) the Secretaries consider appropriate to ensure that the vehicle or equipment will—

(A) comply, after importation, with the standards prescribed under section 32502 of this title;

(B) be exported; or

(C) be abandoned to the United States Government.

(2) The Secretaries may prescribe joint regulations that allow a passenger motor vehicle or passenger motor vehicle equipment to be imported into the United States after the first purchase in good faith other than for resale.

(d) LIABILITY UNDER OTHER LAW.—Compliance with a standard under this chapter does not exempt a person from liability provided by law.

### **§ 32507. Penalties and enforcement**

(a) CIVIL PENALTY.—(1) A person that violates section 32506(a) of this title is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of section 32506(a)(1) or (4) of this title—

(A) that does not comply with a standard prescribed under section 32502 of this title; or

(B) for which a certificate is not provided, or for which a false or misleading certificate is provided, under section 32504 of this title.

(2) The maximum civil penalty under this subsection for a related series of violations is \$800,000.

(3) The Secretary of Transportation imposes a civil penalty under this subsection. The Attorney General or the Secretary, with the concurrence of the Attorney General, shall bring a civil action in a United States district court to collect the penalty.

(b) CRIMINAL PENALTY.—A person knowingly and willfully violating section 32506(a)(1) of this title after receiving a notice of noncompliance from the Secretary shall be fined under title 18, imprisoned for not more than one year, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of the corporation who, with knowledge of the Secretary's notice, knowingly and willfully authorizes, orders, or performs an act that is any part of the violation.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Secretary or the Attorney General may bring a civil action in a United States district court to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle or passenger motor vehicle equipment that is found, before the first purchase in good faith other than for resale, not to comply with a standard prescribed under section 32502 of this title.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

1 (B) give the person an opportunity to present that person's views;  
2 and

3 (C) except for a knowing and willful violation, give the person a rea-  
4 sonable opportunity to comply.

5 (3) The failure of the Secretary to comply with paragraph (2) of this sub-  
6 section does not prevent a court from granting appropriate relief.

7 (d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating  
8 an injunction or restraining order issued under subsection (c) of this sec-  
9 tion, the violation of which is also a violation of this chapter, the defendant  
10 may demand a jury trial. The defendant shall be tried as provided in rule  
11 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

12 (e) VENUE.—A civil action under subsection (a) or (c) of this section may  
13 be brought in the judicial district in which the violation occurred or the de-  
14 fendant is found, resides, or does business. Process in the action may be  
15 served in any other judicial district in which the defendant resides or is  
16 found. A subpoena for a witness in the action may be served in any judicial  
17 district.

18 **§ 32508. Civil actions by owners of passenger motor vehicles**

19 When an owner of a passenger motor vehicle sustains damages as a result  
20 of a motor vehicle accident because the vehicle did not comply with a stand-  
21 ard prescribed under section 32502 of this title, the owner may bring a civil  
22 action against the manufacturer to recover the damages. The action may  
23 be brought in the United States District Court for the District of Columbia  
24 or in the United States district court for the judicial district in which the  
25 owner resides. The action must be brought not later than 3 years after the  
26 date of the accident. The court shall award costs and a reasonable attor-  
27 ney's fee to the owner when a judgment is entered for the owner.

28 **§ 32509. Information and assistance from other depart-**  
29 **ments, agencies, and instrumentalities**

30 (a) GENERAL AUTHORITY.—The Secretary of Transportation may re-  
31 quest information necessary to carry out this chapter from a department,  
32 agency, or instrumentality of the United States Government. The head of  
33 the department, agency, or instrumentality shall provide the information.

34 (b) DETAILING PERSONNEL.—The head of a department, agency, or in-  
35 strumentality may detail, on a reimbursable basis, personnel to assist the  
36 Secretary in carrying out this chapter.

37 **§ 32510. Annual report**

38 Not later than March 31 of each year, the Secretary of Transportation  
39 shall submit to Congress and the President a report on the progress in car-  
40 rying out section 32501 of this title. The report shall include—



1 (1) a statement of the cost savings resulting from carrying out this  
2 chapter; and

3 (2) recommendations for legislative or other action the Secretary de-  
4 cides may be appropriate.

5 **§ 32511. Relationship to other motor vehicle standards**

6 (a) PREEMPTION.—Except as provided in this section, a State or a politi-  
7 cal subdivision of a State may prescribe or enforce a bumper standard for  
8 a passenger motor vehicle or passenger motor vehicle equipment only if the  
9 standard is identical to a standard prescribed under section 32502 of this  
10 title.

11 (b) ENFORCEMENT.—This chapter and chapter 301 of this title do not  
12 affect the authority of a State to enforce a bumper standard about an as-  
13 pect of performance of a passenger motor vehicle or passenger motor vehicle  
14 equipment not covered by a standard prescribed under section 32502 of this  
15 title if the State bumper standard—

16 (1) does not conflict with a standard prescribed under chapter 301  
17 of this title; and

18 (2) was in effect or prescribed by the State on October 20, 1972.

19 (c) ADDITIONAL AND HIGHER STANDARDS OF PERFORMANCE.—The  
20 United States Government, a State, or a political subdivision of a State may  
21 prescribe a bumper standard for a passenger motor vehicle or passenger  
22 motor vehicle equipment obtained for its own use that imposes additional  
23 or higher standards of performance than a standard prescribed under sec-  
24 tion 32502 of this title.

25 **CHAPTER 327—ODOMETERS**

Sec.

32701. Findings and purposes.

32702. Definitions.

32703. Preventing tampering.

32704. Service, repair, and replacement.

32705. Disclosure requirements on transfer of motor vehicles.

32706. Inspections, investigations, and records.

32707. Administrative warrants.

32708. Confidentiality of information.

32709. Penalties and enforcement.

32710. Civil actions by private persons.

32711. Relationship to State law.

26 **§ 32701. Findings and purposes**

27 (a) FINDINGS.—Congress finds that—

28 (1) buyers of motor vehicles rely heavily on the odometer reading as  
29 an index of the condition and value of a vehicle;

30 (2) buyers are entitled to rely on the odometer reading as an accu-  
31 rate indication of the mileage of the vehicle;

32 (3) an accurate indication of the mileage assists a buyer in deciding  
33 on the safety and reliability of the vehicle; and

1 (4) motor vehicles move in, or affect, interstate and foreign com-  
 2 merce.

3 (b) PURPOSES.—The purposes of this chapter are—

4 (1) to prohibit tampering with motor vehicle odometers; and

5 (2) to provide safeguards to protect purchasers in the sale of motor  
 6 vehicles with altered or reset odometers.

7 **§ 32702. Definitions**

8 In this chapter—

9 (1) “auction company” means a person taking possession of a motor  
 10 vehicle owned by another to sell at an auction.

11 (2) “dealer” means a person that sold at least 5 motor vehicles dur-  
 12 ing the prior 12 months to buyers that in good faith bought the vehi-  
 13 cles other than for resale.

14 (3) “distributor” means a person that sold at least 5 motor vehicles  
 15 during the prior 12 months for resale.

16 (4) “leased motor vehicle” means a motor vehicle leased to a person  
 17 for at least 4 months by a lessor that leased at least 5 vehicles during  
 18 the prior 12 months.

19 (5) “odometer” means an instrument for measuring and recording  
 20 the distance a motor vehicle is driven, but does not include an auxiliary  
 21 instrument designed to be reset by the operator of the vehicle to record  
 22 mileage of a trip.

23 (6) “repair” and “replace” mean to restore to a sound working con-  
 24 dition by replacing any part of an odometer or by correcting any inop-  
 25 erative part of an odometer.

26 (7) “title” means the certificate of title or other document issued by  
 27 the State indicating ownership.

28 (8) “transfer” means to change ownership by sale, gift, or other  
 29 means.

30 **§ 32703. Preventing tampering**

31 A person may not—

32 (1) advertise for sale, sell, use, install, or have installed, a device that  
 33 makes an odometer of a motor vehicle register a mileage different from  
 34 the mileage the vehicle was driven, as registered by the odometer within  
 35 the designed tolerance of the manufacturer of the odometer;

36 (2) disconnect, reset, alter, or have disconnected, reset, or altered,  
 37 an odometer of a motor vehicle intending to change the mileage reg-  
 38 istered by the odometer;

39 (3) with intent to defraud, operate a motor vehicle on a public street,  
 40 road, or highway if the person knows that the odometer of the vehicle  
 41 is disconnected or not operating; or

1 (4) conspire to violate this section or section 32704 or 32705 of this  
2 title.

3 **§ 32704. Service, repair, and replacement**

4 (a) ADJUSTING MILEAGE.—A person may service, repair, or replace an  
5 odometer of a motor vehicle if the mileage registered by the odometer re-  
6 mains the same as before the service, repair, or replacement. If the mileage  
7 cannot remain the same—

8 (1) the person shall adjust the odometer to read zero; and

9 (2) the owner of the vehicle or agent of the owner shall attach a  
10 written notice to the left door frame of the vehicle specifying the mile-  
11 age before the service, repair, or replacement and the date of the serv-  
12 ice, repair, or replacement.

13 (b) REMOVING OR ALTERING NOTICE.—A person may not, with intent to  
14 defraud, remove or alter a notice attached to a motor vehicle as required  
15 by this section.

16 **§ 32705. Disclosure requirements on transfer of motor vehi-**  
17 **cles**

18 (a) WRITTEN DISCLOSURE REQUIREMENTS.—(1) Under regulations pre-  
19 scribed by the Secretary of Transportation, a person transferring ownership  
20 of a motor vehicle shall give the transferee a written disclosure—

21 (A) of the cumulative mileage registered by the odometer; or

22 (B) that the mileage is unknown if the transferor knows that the  
23 mileage registered by the odometer is incorrect.

24 (2) A person making a written disclosure required by a regulation pre-  
25 scribed under paragraph (1) of this subsection may not make a false state-  
26 ment in the disclosure.

27 (3) A person acquiring a motor vehicle for resale may accept a disclosure  
28 under this section only if it is complete.

29 (4) The regulations prescribed by the Secretary shall provide the way in  
30 which information is disclosed and retained under this section.

31 (b) MILEAGE STATEMENT REQUIREMENT FOR LICENSING.—(1) A motor  
32 vehicle the ownership of which is transferred may not be licensed for use  
33 in a State unless the transferee, in submitting an application to a State for  
34 the title on which the license will be issued, includes with the application  
35 the transferor's title and, if that title contains the space referred to in para-  
36 graph (3)(A)(iii) of this subsection, a statement, signed and dated by the  
37 transferor, of the mileage disclosure required under subsection (a) of this  
38 section. This paragraph does not apply to a transfer of ownership of a  
39 motor vehicle that has not been licensed before the transfer.

40 (2)(A) Under regulations prescribed by the Secretary, if the title to a  
41 motor vehicle issued to a transferor by a State is in the possession of a

lienholder when the transferor transfers ownership of the vehicle, the transferor may use a written power of attorney (if allowed by State law) in making the mileage disclosure required under subsection (a) of this section. Regulations prescribed under this paragraph—

(i) shall prescribe the form of the power of attorney;

(ii) shall provide that the form be printed by means of a secure printing process (or other secure process);

(iii) shall provide that the State issue the form to the transferee;

(iv) shall provide that the person exercising the power of attorney retain a copy and submit the original to the State with a copy of the title showing the restatement of the mileage;

(v) may require that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with section 32701(b) of this title, after considering the costs to the State;

(vi) shall ensure that the mileage at the time of transfer be disclosed on the power of attorney document;

(vii) shall ensure that the mileage be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (3)(A)(iii) of this subsection;

(viii) may not require that a motor vehicle be titled in the State in which the power of attorney was issued;

(ix) shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles; and

(x) shall provide other conditions the Secretary considers appropriate.

(B) Section 32709(a) and (b) applies to a person granting or granted a power of attorney under this paragraph.

(3)(A) A motor vehicle the ownership of which is transferred may be licensed for use in a State only if the title issued by the State to the transferee—

(i) is produced by means of a secure printing process (or other secure process);

(ii) indicates the mileage disclosure required to be made under subsection (a) of this section; and

(iii) contains a space for the transferee to disclose the mileage at the time of a future transfer and to sign and date the disclosure.

(B) Subparagraph (A) of this paragraph does not require a State to verify, or preclude a State from verifying, the mileage information contained in the title.

(c) LEASED VEHICLES.—(1) For a leased vehicle, the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made by the lessee to the lessor when the lessor transfers ownership of the leased vehicle.

(2) Under those regulations, the lessor shall provide written notice to the lessee of—

(A) the mileage disclosure requirements of subsection (a) of this section; and

(B) the penalties for failure to comply with those requirements.

(3) The lessor shall retain the disclosures made by a lessee under paragraph (1) of this subsection for at least 4 years following the date the lessor transfers the vehicle.

(4) If the lessor transfers ownership of a leased vehicle without obtaining possession of the vehicle, the lessor, in making the disclosure required by subsection (a) of this section, may indicate on the title the mileage disclosed by the lessee under paragraph (1) of this subsection unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(d) STATE ALTERNATE VEHICLE MILEAGE DISCLOSURE REQUIREMENTS.—The requirements of subsections (b) and (c)(1) of this section on the disclosure of motor vehicle mileage when motor vehicles are transferred or leased apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(e) AUCTION SALES.—If a motor vehicle is sold at an auction, the auction company conducting the auction shall maintain the following records for at least 4 years after the date of the sale:

(1) the name of the most recent owner of the motor vehicle (except the auction company) and the name of the buyer of the motor vehicle.

(2) the vehicle identification number required under chapter 301 or 331 of this title.

(3) the odometer reading on the date the auction company took possession of the motor vehicle.

(f) APPLICATION AND REVISION OF STATE LAW.—(1) Except as provided in paragraph (2) of this subsection, subsections (b)–(e) of this section apply to the transfer of a motor vehicle after April 28, 1989.

(2) If a State requests, the Secretary shall assist the State in revising its laws to comply with subsection (b) of this section. If a State requires

time beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary, on request of the State, may grant additional time that the Secretary considers reasonable by publishing a notice in the Federal Register. The notice shall include the reasons for granting the additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve compliance.

**§ 32706. Inspections, investigations, and records**

(a) **AUTHORITY TO INSPECT AND INVESTIGATE.**—Subject to section 32707 of this title, the Secretary of Transportation may conduct an inspection or investigation necessary to carry out this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall cooperate with State and local officials to the greatest extent possible in conducting an inspection or investigation. The Secretary may give the Attorney General information about a violation of this chapter or a regulation prescribed or order issued under this chapter.

(b) **ENTRY, INSPECTION, AND IMPOUNDMENT.**—(1) In carrying out subsection (a) of this section, an officer or employee designated by the Secretary, on display of proper credentials and written notice to the owner, operator, or agent in charge, may—

(A) enter and inspect commercial premises in which a motor vehicle or motor vehicle equipment is manufactured, held for shipment or sale, maintained, or repaired;

(B) enter and inspect noncommercial premises in which the Secretary reasonably believes there is a vehicle or equipment that is an object of a violation of this chapter;

(C) inspect that vehicle or equipment; and

(D) impound for not more than 72 hours for inspection a vehicle or equipment that the Secretary reasonably believes is an object of a violation of this chapter.

(2) An inspection or impoundment under this subsection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness. The written notice may consist of a warrant issued under section 32707 of this title.

(c) **REASONABLE COMPENSATION.**—When the Secretary impounds for inspection a motor vehicle (except a vehicle subject to subchapter II of chapter 105 of this title) or motor vehicle equipment under subsection (b)(1)(D) of this section, the Secretary shall pay reasonable compensation to the owner of the vehicle or equipment if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle or equipment.

(d) **RECORDS AND INFORMATION REQUIREMENTS.**—(1) To enable the Secretary to decide whether a dealer or distributor is complying with this

chapter and regulations prescribed and orders issued under this chapter, the Secretary may require the dealer or distributor—

(A) to keep records;

(B) to provide information from those records if the Secretary states the purpose for requiring the information and identifies the information to the fullest extent practicable; and

(C) to allow an officer or employee designated by the Secretary to inspect relevant records of the dealer or distributor.

(2) This subsection and subsection (e)(1)(B) of this section do not authorize the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(e) ADMINISTRATIVE AUTHORITY AND CIVIL ACTIONS TO ENFORCE.—

(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpoena or order of the Secretary under this subsection may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(f) PROHIBITIONS.—A person may not fail to keep records, refuse access to or copying of records, fail to make reports or provide information, fail to allow entry or inspection, or fail to permit impoundment, as required under this section.

### **§ 32707. Administrative warrants**

(a) DEFINITION.—In this section, “probable cause” means a valid public interest in the effective enforcement of this chapter or a regulation prescribed under this chapter sufficient to justify the inspection or impoundment in the circumstances stated in an application for a warrant under this section.

(b) WARRANT REQUIREMENT AND ISSUANCE.—(1) Except as provided in paragraph (4) of this subsection, an inspection or impoundment under section 32706 of this title may be carried out only after a warrant is obtained.

(2) A judge of a court of the United States or a State court of record or a United States magistrate may issue a warrant for an inspection or impoundment under section 32706 of this title within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—

(A) establishes probable cause to issue the warrant; and

(B) is sworn to before the judge or magistrate by an officer or employee who knows the facts alleged in the affidavit.

(3) The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that probable cause exists to issue the warrant. The warrant must—

(A) identify the premises, property, or motor vehicle to be inspected and the items or type of property to be impounded;

(B) state the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;

(C) direct an individual authorized under section 32706 of this title to inspect the premises, property, or vehicle for the purpose stated in the warrant and, when appropriate, to impound the property specified in the warrant;

(D) direct that the warrant be served during the hours specified in the warrant; and

(E) name the judge or magistrate with whom proof of service is to be filed.

(4) A warrant under this section is not required when—

(A) the owner, operator, or agent in charge of the premises consents;

(B) it is reasonable to believe that the mobility of the motor vehicle to be inspected makes it impractical to obtain a warrant;

(C) an application for a warrant cannot be made because of an emergency;

(D) records are to be inspected and copied under section 32706(e)(1)(A) of this title; or

(E) a warrant is not constitutionally required.

(c) SERVICE AND IMPOUNDMENT OF PROPERTY.—(1) A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant if the Secretary of Transportation demonstrates a need for additional time. Proof of service must be filed promptly with a written inventory of the property impounded under the warrant. The inventory shall be made in the presence of the individual serving the warrant and the individual from whose possession or premises the property was impounded, or if that individual is not present, a credible individual except the



individual making the inventory. The individual serving the warrant shall verify the inventory. On request, the judge or magistrate shall send a copy of the inventory to the individual from whose possession or premises the property was impounded and to the applicant for the warrant.

(2) When property is impounded under a warrant, the individual serving the warrant shall—

(A) give the person from whose possession or premises the property was impounded a copy of the warrant and a receipt for the property; or

(B) leave the copy and receipt at the place from which the property was impounded.

(3) The judge or magistrate shall file the warrant, proof of service, and all documents filed about the warrant with the clerk of the United States district court for the judicial district in which the inspection is made.

#### **§ 32708. Confidentiality of information**

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(1) to another officer or employee of the United States Government for use in carrying out this chapter; or

(2) in a proceeding under this chapter.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

#### **§ 32709. Penalties and enforcement**

(a) CIVIL PENALTY.—(1) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$2,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is \$100,000.

(2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) CRIMINAL PENALTY.—A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter.

(c) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) CIVIL ACTIONS BY STATES.—(1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—

(A) to enjoin the violation; or

(B) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.

(2) An action under this subsection may be brought in an appropriate United States district court or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

### **§ 32710. Civil actions by private persons**

(a) VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or \$1,500, whichever is greater.

(b) CIVIL ACTIONS.—A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

**§ 32711. Relationship to State law**

Except to the extent that State law is inconsistent with this chapter, this chapter does not—

- (1) affect a State law on disconnecting, altering, or tampering with an odometer with intent to defraud; or
- (2) exempt a person from complying with that law.

**CHAPTER 329—AUTOMOBILE FUEL ECONOMY**

Sec.

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**§ 32901. Definitions**

(a) GENERAL.—In this chapter—

(1) “alternative fuel” means—

- (A) methanol;
- (B) denatured ethanol;
- (C) other alcohols;
- (D) except as provided in subsection (b) of this section, a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;
- (E) natural gas;
- (F) liquefied petroleum gas;
- (G) hydrogen;
- (H) coal derived liquid fuels;
- (I) fuels (except alcohol) derived from biological materials;
- (J) electricity (including electricity from solar energy); and
- (K) any other fuel the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits.

(2) “alternative fueled automobile” means an automobile that is a—

- (A) dedicated automobile; or
- (B) dual fueled automobile.

(3) except as provided in section 32908 of this title, “automobile” means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at—

(A) not more than 6,000 pounds gross vehicle weight; or

(B) more than 6,000, but less than 10,000, pounds gross vehicle weight, if the Secretary decides by regulation that—

(i) an average fuel economy standard under this chapter for the vehicle is feasible; and

(ii) an average fuel economy standard under this chapter for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.

(4) “automobile manufactured by a manufacturer” includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person in a model year that is exported not later than 30 days after the end of that model year.

(5) “average fuel economy” means average fuel economy determined under section 32904 of this title.

(6) “average fuel economy standard” means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.

(7) “dedicated automobile” means an automobile that operates only on alternative fuel.

(8) “dual fueled automobile” means an automobile that—

(A) is capable of operating on alternative fuel and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;

(C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Govern-

ment, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

(9) “fuel” means—

(A) gasoline;

(B) diesel oil; or

(C) other liquid or gaseous fuel that the Secretary decides by regulation to include in this definition as consistent with the need of the United States to conserve energy.

(10) “fuel economy” means the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.

(11) “import” means to import into the customs territory of the United States.

(12) “manufacture” (except under section 32902(d) of this title) means to produce or assemble in the customs territory of the United States or to import.

(13) “manufacturer” means—

(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and

(B) if more than one person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.

(14) “model” means a class of automobiles as decided by regulation by the Administrator after consulting and coordinating with the Secretary.

(15) “model year”, when referring to a specific calendar year, means—

(A) the annual production period of a manufacturer, as decided by the Administrator, that includes January 1 of that calendar year; or

(B) that calendar year if the manufacturer does not have an annual production period.

(16) “passenger automobile” means an automobile that the Secretary decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation—

(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and

(B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.

(b) The Secretary may prescribe regulations changing the percentage referred to in subsection (a)(1)(D) of this section to not less than 70 percent because of requirements relating to cold start, safety, or vehicle functions.

(c) MINIMUM DRIVING RANGES FOR DUAL FUELED PASSENGER AUTOMOBILES.—(1) The Secretary shall prescribe by regulation the minimum driving range that dual fueled automobiles that are passenger automobiles must meet when operating on alternative fuel to be dual fueled automobiles under sections 32905 and 32906 of this title. A determination whether a dual fueled automobile meets the minimum driving range requirement under this paragraph shall be based on the combined Agency city/highway fuel economy as determined for average fuel economy purposes for those automobiles.

(2)(A) The Secretary may prescribe a lower range for a specific model than that prescribed under paragraph (1) of this subsection. A manufacturer may petition for a lower range than that prescribed under paragraph (1) for a specific model.

(B) If the Secretary prescribes a minimum driving range of 200 miles for dual fueled automobiles (except electric automobiles) under paragraph (1) of this subsection, subparagraph (A) of this paragraph does not apply to dual fueled automobiles (except electric automobiles).

(C) The minimum driving range prescribed for dual fueled automobiles (except electric automobiles) under subparagraph (A) of this paragraph or paragraph (1) of this subsection must be at least 200 miles.

(3) In prescribing a minimum driving range under paragraph (1) of this subsection and in taking an action under paragraph (2) of this subsection, the Secretary shall consider the purpose set forth in section 3 of the Alternative Motor Fuels Act of 1988 (Public Law 100-494, 102 Stat. 2442), consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other factors the Secretary considers relevant.

### **§ 32902. Average fuel economy standards**

(a) NON-PASSENGER AUTOMOBILES.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles (except passenger automobiles) manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model

1 year. The Secretary may prescribe separate standards for different classes  
2 of automobiles.

3 (b) PASSENGER AUTOMOBILES.—Except as provided in this section, the  
4 average fuel economy standard for passenger automobiles manufactured by  
5 a manufacturer in a model year after model year 1984 shall be 27.5 miles  
6 a gallon.

7 (c) AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to  
8 paragraph (2) of this subsection, the Secretary of Transportation may pre-  
9 scribe regulations amending the standard under subsection (b) of this sec-  
10 tion for a model year to a level that the Secretary decides is the maximum  
11 feasible average fuel economy level for that model year. Section 553 of title  
12 5 applies to a proceeding to amend the standard. However, any interested  
13 person may make an oral presentation and a transcript shall be taken of  
14 that presentation.

15 (2) If an amendment increases the standard above 27.5 miles a gallon  
16 or decreases the standard below 26.0 miles a gallon, the Secretary of Trans-  
17 portation shall submit the amendment to Congress. The procedures of sec-  
18 tion 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply  
19 to an amendment, except that the 15 calendar days referred to in section  
20 551(c) and (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60  
21 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A)  
22 of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days.  
23 If either House of Congress disapproves the amendment under those proce-  
24 dures, the amendment does not take effect.

25 (d) EXEMPTIONS.—(1) Except as provided in paragraph (2) of this sub-  
26 section, on application of a manufacturer that manufactured (whether in the  
27 United States or not) fewer than 10,000 passenger automobiles in the model  
28 year 2 years before the model year for which the application is made, the  
29 Secretary of Transportation may exempt by regulation the manufacturer  
30 from a standard under subsection (b) or (c) of this section. An exemption  
31 for a model year applies only if the manufacturer manufactures (whether  
32 in the United States or not) fewer than 10,000 passenger automobiles in  
33 the model year. The Secretary may exempt a manufacturer only if the Sec-  
34 retary—

35 (A) finds that the applicable standard under those subsections is  
36 more stringent than the maximum feasible average fuel economy level  
37 that the manufacturer can achieve; and

38 (B) prescribes by regulation an alternative average fuel economy  
39 standard for the passenger automobiles manufactured by the exempted  
40 manufacturer that the Secretary decides is the maximum feasible aver-

1       age fuel economy level for the manufacturers to which the standard ap-  
2       plies.

3       (2) Notwithstanding paragraph (1) of this subsection, an importer reg-  
4       istered under section 30141(c) of this title may not be exempted as a manu-  
5       facturer under paragraph (1) for a motor vehicle that the importer—

6           (A) imports; or

7           (B) brings into compliance with applicable motor vehicle safety  
8       standards prescribed under chapter 301 of this title for an individual  
9       under section 30142 of this title.

10      (3) The Secretary of Transportation may prescribe an alternative average  
11      fuel economy standard applicable to an individually exempted manufacturer,  
12      to all automobiles to which this subsection applies, or to classes of passenger  
13      automobiles, as defined under regulations of the Secretary, manufactured by  
14      exempted manufacturers.

15      (4) The Secretary of Transportation may prescribe the contents of an ap-  
16      plication for an exemption.

17      (e) EMERGENCY VEHICLES.—(1) In this subsection, “emergency vehicle”  
18      means an automobile manufactured primarily for use—

19           (A) as an ambulance or combination ambulance-hearse;

20           (B) by the United States Government or a State or local government  
21       for law enforcement; or

22           (C) for other emergency uses prescribed by regulation by the Sec-  
23       retary of Transportation.

24      (2) A manufacturer may elect to have the fuel economy of an emergency  
25      vehicle excluded in applying a fuel economy standard under subsection (a),  
26      (b), (c), or (d) of this section. The election is made by providing written  
27      notice to the Secretary of Transportation and to the Administrator of the  
28      Environmental Protection Agency.

29      (f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE  
30      FUEL ECONOMY.—When deciding maximum feasible average fuel economy  
31      under this section, the Secretary of Transportation shall consider techno-  
32      logical feasibility, economic practicability, the effect of other motor vehicle  
33      standards of the Government on fuel economy, and the need of the United  
34      States to conserve energy.

35      (g) REQUIREMENTS FOR OTHER AMENDMENTS.—(1) The Secretary of  
36      Transportation may prescribe regulations amending an average fuel econ-  
37      omy standard prescribed under subsection (a) or (d) of this section if the  
38      amended standard meets the requirements of subsection (a) or (d), as ap-  
39      propriate.

40      (2) When the Secretary of Transportation prescribes an amendment  
41      under this section that makes an average fuel economy standard more strin-



gent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

(h) LIMITATIONS.—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of dedicated automobiles; and

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel.

(i) SECRETARY OF ENERGY COMMENTS.—(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

(j) CONSULTATION.—The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and section 32903 of this title.

### **§ 32903. Credits for exceeding average fuel economy standards**

(a) EARNING AND PERIOD FOR APPLYING CREDITS.—When the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under section 32902(b)–(d) of this title (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—

(1) any of the 3 consecutive model years immediately before the model year for which the credits are earned; and

(2) to the extent not used under clause (1) of this subsection, any of the 3 consecutive model years immediately after the model year for which the credits are earned.

1 (b) PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.—(1)  
 2 Except as provided in paragraph (2) of this subsection, credits under this  
 3 section are available to a manufacturer at the end of the model year in  
 4 which earned.

5 (2)(A) Before the end of a model year, if a manufacturer has reason to  
 6 believe that its average fuel economy for passenger automobiles will be less  
 7 than the applicable standard for that model year, the manufacturer may  
 8 submit a plan to the Secretary of Transportation demonstrating that the  
 9 manufacturer will earn sufficient credits under this section within the next  
 10 3 model years to allow the manufacturer to meet that standard for the  
 11 model year involved. Unless the Secretary finds that the manufacturer is  
 12 unlikely to earn sufficient credits under the plan, the Secretary shall ap-  
 13 prove the plan. Those credits are available for the model year involved if—

- 14 (i) the Secretary approves the plan; and  
 15 (ii) the manufacturer earns those credits as provided by the plan.

16 (B) If the average fuel economy of a manufacturer is less than the appli-  
 17 cable standard under section 32902(b)–(d) of this title after applying credits  
 18 under subsection (a)(1) of this section, the Secretary of Transportation shall  
 19 notify the manufacturer and give the manufacturer a reasonable time (of  
 20 at least 60 days) to submit a plan.

21 (c) DETERMINING NUMBER OF CREDITS.—The number of credits a man-  
 22 ufacturer earns under this section equals the product of—

23 (1) the number of tenths of a mile a gallon by which the average  
 24 fuel economy of the passenger automobiles manufactured by the manu-  
 25 facturer in the model year in which the credits are earned exceeds the  
 26 applicable average fuel economy standard under section 32902(b)–(d)  
 27 of this title; times

28 (2) the number of passenger automobiles manufactured by the man-  
 29 ufacturer during that model year.

30 (d) APPLYING CREDITS FOR PASSENGER AUTOMOBILES.—The Secretary  
 31 of Transportation shall apply credits to a model year on the basis of the  
 32 number of tenths of a mile a gallon by which the manufacturer involved was  
 33 below the applicable average fuel economy standard for that model year and  
 34 the number of passenger automobiles manufactured that model year by the  
 35 manufacturer. Credits applied to a model year are no longer available for  
 36 another model year. Before applying credits, the Secretary shall give the  
 37 manufacturer written notice and reasonable opportunity to comment.

38 (e) APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits  
 39 for a manufacturer of automobiles that are not passenger automobiles are  
 40 earned and applied to a model year in which the average fuel economy of  
 41 that class of automobiles is below the applicable average fuel economy

standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.

(f) REFUND OF COLLECTED PENALTY.—When a civil penalty has been collected under this chapter from a manufacturer that has earned credits under this section, the Secretary of the Treasury shall refund to the manufacturer the amount of the penalty to the extent the penalty is attributable to credits available under this section.

#### **§ 32904. Calculation of average fuel economy**

(a) METHOD OF CALCULATION.—(1) The Administrator of the Environmental Protection Agency shall calculate the average fuel economy of a manufacturer subject to—

(A) section 32902(a) of this title in a way prescribed by the Administrator; and

(B) section 32902(b)–(d) of this title by dividing—

(i) the number of passenger automobiles manufactured by the manufacturer in a model year; by

(ii) the sum of the fractions obtained by dividing the number of passenger automobiles of each model manufactured by the manufacturer in that model year by the fuel economy measured for that model.

(2)(A) In this paragraph, “electric vehicle” means a vehicle powered primarily by an electric motor drawing electrical current from a portable source.

(B) If a manufacturer manufactures an electric vehicle, the Administrator shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

(i) the approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

(ii) the national average electrical generation and transmission efficiencies.

(iii) the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) the specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

(b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANUFACTURED DOMESTICALLY AND NOT DOMESTICALLY.—(1) In this subsection—

(A) a passenger automobile is deemed to be manufactured domestically in a model year if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Canada and the automobile is imported into the United States more than 30 days after the end of the model year; and

(B) the fuel economy of a passenger automobile that is not manufactured domestically is deemed to be equal to the average fuel economy of all passenger automobiles that are not manufactured domestically.

(2)(A) Except as provided in paragraphs (4) and (5) of this subsection, the Administrator shall make separate calculations under subsection (a)(1)(B) of this section for—

(i) passenger automobiles manufactured domestically by a manufacturer (or included in this category under paragraph (3) of this subsection); and

(ii) passenger automobiles not manufactured domestically by that manufacturer (or excluded from this category under paragraph (3) of this subsection).

(B) Passenger automobiles described in subparagraph (A)(i) and (ii) of this paragraph are deemed to be manufactured by separate manufacturers under this chapter.

(3)(A) A manufacturer may submit to the Secretary of Transportation for approval a plan, including supporting material, stating the actions and the deadlines for taking the actions, that will ensure that the model or models referred to in subparagraph (B) of this paragraph will be manufactured domestically before the end of the 4th model year covered by the plan. The Secretary promptly shall consider and act on the plan. The Secretary shall approve the plan unless—

(i) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph; or

(ii) the manufacturer previously has submitted a plan approved by the Secretary under this paragraph.

(B) If the plan is approved, the Administrator shall include under paragraph (2)(A)(i) and exclude under paragraph (2)(A)(ii) of this subsection, for each of the 4 model years covered by the plan, not more than 150,000 passenger automobiles manufactured by that manufacturer but not qualifying as domestically manufactured if—

(i) the model or models involved previously have not been manufactured domestically;

1 (ii) at least 50 percent of the cost to the manufacturer of each of  
2 the automobiles is attributable to value added in the United States or  
3 Canada;

4 (iii) the automobiles, if their assembly was completed in Canada, are  
5 imported into the United States not later than 30 days after the end  
6 of the model year; and

7 (iv) the model or models are manufactured domestically before the  
8 end of the 4th model year covered by the plan.

9 (4)(A) A manufacturer may file with the Secretary of Transportation a  
10 petition for an exemption from the requirement of separate calculations  
11 under paragraph (2)(A) of this subsection if the manufacturer began auto-  
12 mobile production or assembly in the United States—

13 (i) after December 22, 1975, and before May 1, 1980; or

14 (ii) after April 30, 1980, if the manufacturer has engaged in the pro-  
15 duction or assembly in the United States for at least one model year  
16 ending before January 1, 1986.

17 (B) The Secretary of Transportation shall grant the exemption unless the  
18 Secretary finds that the exemption would result in reduced employment in  
19 the United States related to motor vehicle manufacturing during the period  
20 of the exemption. An exemption under this paragraph is effective for 5  
21 model years or, if requested by the manufacturer, a longer period provided  
22 by the Secretary in the order granting the exemption. The exemption applies  
23 to passenger automobiles manufactured by that manufacturer during the pe-  
24 riod of the exemption.

25 (C) Before granting an exemption, the Secretary of Transportation shall  
26 provide notice of, and reasonable opportunity for, written or oral comment  
27 about the petition. The period for comment shall end not later than 60 days  
28 after the petition is filed, except that the Secretary may extend the period  
29 for not more than another 30 days. The Secretary shall decide whether to  
30 grant or deny the exemption, and publish notice of the decision in the Fed-  
31 eral Register, not later than 90 days after the petition is filed, except that  
32 the Secretary may extend the time for decision to a later date (not later  
33 than 150 days after the petition is filed) if the Secretary publishes notice  
34 of, and reasons for, the extension in the Federal Register. If the Secretary  
35 does not make a decision within the time provided in this subparagraph, the  
36 petition is deemed to have been granted. Not later than 30 days after the  
37 end of the decision period, the Secretary shall submit a written statement  
38 of the reasons for not making a decision to the Committee on Commerce,  
39 Science, and Transportation of the Senate and the Committee on Energy  
40 and Commerce of the House of Representatives.

(5)(A) A person adversely affected by a decision of the Secretary of Transportation granting or denying an exemption may file, not later than 30 days after publication of the notice of the decision, a petition for review in the United States Court of Appeals for the District of Columbia Circuit. That court has exclusive jurisdiction to review the decision and to affirm, remand, or set aside the decision under section 706(2)(A)–(D) of title 5.

(B) A judgment of the court under this subparagraph may be reviewed by the Supreme Court under section 1254 of title 28. Application for review by the Supreme Court must be made not later than 30 days after entry of the court’s judgment.

(C) A decision of the Secretary of Transportation on a petition for an exemption under this paragraph may be reviewed administratively or judicially only as provided in this paragraph.

(6) Notwithstanding section 32903 of this title, during a model year when an exemption under this paragraph is effective for a manufacturer—

(A) credit may not be earned under section 32903(a) of this title by the manufacturer; and

(B) credit may not be made available under section 32903(b)(2) of this title for the manufacturer.

(c) TESTING AND CALCULATION PROCEDURES.—The Administrator shall measure fuel economy for each model and calculate average fuel economy for a manufacturer under testing and calculation procedures prescribed by the Administrator. However, except under section 32908 of this title, the Administrator shall use the same procedures for passenger automobiles the Administrator used for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results. A measurement of fuel economy or a calculation of average fuel economy (except under section 32908) shall be rounded off to the nearest .1 of a mile a gallon. The Administrator shall decide on the quantity of other fuel that is equivalent to one gallon of gasoline. To the extent practicable, a fuel economy test shall be carried out with emissions tests under section 206 of the Clean Air Act (42 U.S.C. 7525).

(d) EFFECTIVE DATE OF PROCEDURE OR AMENDMENT.—The Administrator shall prescribe a procedure under this section, or an amendment (except a technical or clerical amendment) in a procedure, at least 12 months before the beginning of the model year to which the procedure or amendment applies.

(e) REPORTS AND CONSULTATION.—The Administrator shall report measurements and calculations under this section to the Secretary of Transportation and shall consult and coordinate with the Secretary in carrying out this section.

**§ 32905. Manufacturing incentives for alternative fuel automobiles**

(a) DEDICATED AUTOMOBILES.—Except as provided in subsection (c) of this section or section 32904(a)(2) of this title, for any model of dedicated automobile manufactured by a manufacturer after model year 1992, the fuel economy measured for that model shall be based on the fuel content of the alternative fuel used to operate the automobile. A gallon of a liquid alternative fuel used to operate a dedicated automobile is deemed to contain .15 gallon of fuel.

(b) DUAL FUELED AUTOMOBILES.—Except as provided in subsection (d) of this section or section 32904(a)(2) of this title, for any model of dual fueled automobile manufactured by a manufacturer in model years 1993–2004, the Administrator of the Environmental Protection Agency shall measure the fuel economy for that model by dividing 1.0 by the sum of—

- (1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and
- (2) .5 divided by the fuel economy measured under subsection (a) of this section when operating the model on alternative fuel.

(c) GASEOUS FUEL DEDICATED AUTOMOBILES.—For any model of gaseous fuel dedicated automobile manufactured by a manufacturer after model year 1992, the Administrator shall measure the fuel economy for that model based on the fuel content of the gaseous fuel used to operate the automobile. One hundred cubic feet of natural gas is deemed to contain .823 gallon equivalent of natural gas. The Secretary of Transportation shall determine the appropriate gallon equivalent of other gaseous fuels. A gallon equivalent of gaseous fuel is deemed to have a fuel content of .15 gallon of fuel.

(d) GASEOUS FUEL DUAL FUELED AUTOMOBILES.—For any model of gaseous fuel dual fueled automobile manufactured by a manufacturer in model years 1993–2004, the Administrator shall measure the fuel economy for that model by dividing 1.0 by the sum of—

- (1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and
- (2) .5 divided by the fuel economy measured under subsection (c) of this section when operating the model on gaseous fuel.

(e) FUEL ECONOMY CALCULATIONS.—The Administrator shall calculate the manufacturer's average fuel economy under section 32904(a)(1) of this title for each model described under subsections (a)–(d) of this section by using as the denominator the fuel economy measured for each model under subsections (a)–(d).

(f) EXTENDING APPLICATION OF SUBSECTIONS (b) AND (d).—Not later than December 31, 2001, the Secretary of Transportation shall—

(1) extend by regulation the application of subsections (b) and (d) of this section for not more than 4 consecutive model years immediately after model year 2004 and explain the basis on which the extension is granted; or

(2) publish a notice explaining the reasons for not extending the application of subsections (b) and (d) of this section.

(g) STUDY AND REPORT.—Not later than September 30, 2000, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator, shall complete a study of the success of the policy of subsections (b) and (d) of this title, and submit to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study, including preliminary conclusions on whether the application of subsections (b) and (d) should be extended for up to 4 more model years. The study and conclusions shall consider—

(1) the availability to the public of alternative fueled automobiles and alternative fuel;

(2) energy conservation and security;

(3) environmental considerations; and

(4) other relevant factors.

**§ 32906. Maximum fuel economy increase for alternative fuel automobiles**

(a) MAXIMUM INCREASES.—(1)(A) For each of the model years 1993–2004 for each category of automobile (except an electric automobile), the maximum increase in average fuel economy for a manufacturer attributable to dual fueled automobiles is 1.2 miles a gallon.

(B) If the application of section 32905(b) and (d) of this title is extended under section 32905(f) of this title, for each category of automobile (except an electric automobile) the maximum increase in average fuel economy for a manufacturer for each of the model years 2005–2008 attributable to dual fueled automobiles is .9 mile a gallon.

(2) In applying paragraph (1) of this subsection, the Administrator of the Environmental Protection Agency shall determine the increase in a manufacturer's average fuel economy attributable to dual fueled automobiles by subtracting from the manufacturer's average fuel economy calculated under section 32905(e) of this title the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 32904(a)(1) of this title by including as the denominator for each model of dual fueled automobile the fuel economy when the automobiles are



operated on gasoline or diesel fuel. If the increase attributable to dual fueled automobiles for any model year described—

(A) in paragraph (1)(A) of this subsection is more than 1.2 miles a gallon, the limitation in paragraph (1)(A) applies; and

(B) in paragraph (1)(B) of this subsection is more than .9 mile a gallon, the limitation in paragraph (1)(B) applies.

(b) OFFSETS.—Notwithstanding this section and sections 32901(c) and 32905 of this title, if the Secretary of Transportation reduces the average fuel economy standard for passenger automobiles for any model year below 27.5 miles a gallon, an increase in average fuel economy for passenger automobiles of more than .7 mile a gallon to which a manufacturer of dual fueled automobiles would otherwise be entitled is reduced by an amount equal to the amount of the reduction in the standard. However, the increase may not be reduced to less than .7 mile a gallon.

#### **§ 32907. Reports and tests of manufacturers**

(a) MANUFACTURER REPORTS.—(1) A manufacturer shall report to the Secretary of Transportation on—

(A) whether the manufacturer will comply with an applicable average fuel economy standard under section 32902 of this title for the model year for which the report is made;

(B) the actions the manufacturer has taken or intends to take to comply with the standard; and

(C) other information the Secretary requires by regulation.

(2) A manufacturer shall submit a report under paragraph (1) of this subsection during the 30 days—

(A) before the beginning of each model year; and

(B) beginning on the 180th day of the model year.

(3) When a manufacturer decides that actions reported under paragraph (1)(B) of this subsection are not sufficient to ensure compliance with that standard, the manufacturer shall report to the Secretary additional actions the manufacturer intends to take to comply with the standard and include a statement about whether those actions are sufficient to ensure compliance.

(4) This subsection does not apply to a manufacturer for a model year for which the manufacturer is subject to an alternative average fuel economy standard under section 32902(d) of this title.

(b) RECORDS, REPORTS, TESTS, INFORMATION, AND INSPECTION.—(1) Under regulations prescribed by the Secretary or the Administrator of the Environmental Protection Agency to carry out this chapter, a manufacturer shall keep records, make reports, conduct tests, and provide items and information. On request and display of proper credentials, an officer or employee designated by the Secretary or Administrator may inspect automobiles and

1 records of the manufacturer. An inspection shall be made at a reasonable  
2 time and in a reasonable way.

3 (2) The district courts of the United States may—

4 (A) issue an order enforcing a requirement or request under para-  
5 graph (1) of this subsection; and

6 (B) punish a failure to obey the order as a contempt of court.

7 **§ 32908. Fuel economy information**

8 (a) DEFINITIONS.—In this section—

9 (1) “automobile” includes an automobile rated at not more than  
10 8,500 pounds gross vehicle weight regardless of whether the Secretary  
11 of Transportation has applied this chapter to the automobile under sec-  
12 tion 32901(a)(3)(B) of this title.

13 (2) “dealer” means a person residing or located in a State, the Dis-  
14 trict of Columbia, or a territory or possession of the United States, and  
15 engaged in the sale or distribution of new automobiles to the first per-  
16 son (except a dealer buying as a dealer) that buys the automobile in  
17 good faith other than for resale.

18 (b) LABELING REQUIREMENTS AND CONTENTS.—(1) Under regulations  
19 of the Administrator of the Environmental Protection Agency, a manufac-  
20 turer of automobiles shall attach a label to a prominent place on each au-  
21 tomobile manufactured in a model year. The dealer shall maintain the label.  
22 The label shall contain the following information:

23 (A) the fuel economy of the automobile.

24 (B) the estimated annual fuel cost of operating the automobile.

25 (C) the range of fuel economy of comparable automobiles of all man-  
26 ufacturers.

27 (D) a statement that a booklet is available from the dealer to assist  
28 in making a comparison of fuel economy of other automobiles manufac-  
29 tured by all manufacturers in that model year.

30 (E) the amount of the automobile fuel efficiency tax imposed on the  
31 sale of the automobile under section 4064 of the Internal Revenue Code  
32 of 1986 (26 U.S.C. 4064).

33 (F) other information required or authorized by the Administrator  
34 that is related to the information required by clauses (A)–(D) of this  
35 paragraph.

36 (2) The Administrator may allow a manufacturer to comply with this sub-  
37 section by—

38 (A) disclosing the information on the label required under section 3  
39 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

1 (B) including the statement required by paragraph (1)(E) of this  
 2 subsection at a time and in a way that takes into account special cir-  
 3 cumstances or characteristics.

4 (3) For dedicated automobiles manufactured after model year 1992, the  
 5 fuel economy of those automobiles under paragraph (1)(A) of this sub-  
 6 section is the fuel economy for those automobiles when operated on alter-  
 7 native fuel, measured under section 32905 (a) or (c) of this title, multiplied  
 8 by .15. Each label required under paragraph (1) of this subsection for dual  
 9 fueled automobiles shall—

10 (A) indicate the fuel economy of the automobile when operated on  
 11 gasoline or diesel fuel;

12 (B) clearly identify the automobile as a dual fueled automobile;

13 (C) clearly identify the fuels on which the automobile may be oper-  
 14 ated; and

15 (D) contain a statement informing the consumer that the additional  
 16 information required by subsection (c)(2) of this section is published  
 17 and distributed by the Secretary of Energy.

18 (c) FUEL ECONOMY INFORMATION BOOKLET.—(1) The Administrator  
 19 shall prepare the booklet referred to in subsection (b)(1)(D) of this section.  
 20 The booklet—

21 (A) shall be simple and readily understandable;

22 (B) shall contain information on fuel economy and estimated annual  
 23 fuel costs of operating automobiles manufactured in each model year;  
 24 and

25 (C) may contain information on geographical or other differences in  
 26 estimated annual fuel costs.

27 (2)(A) For dual fueled automobiles manufactured after model year 1992,  
 28 the booklet published under paragraph (1) shall contain additional informa-  
 29 tion on—

30 (i) the energy efficiency and cost of operation of those automobiles  
 31 when operated on gasoline or diesel fuel as compared to those auto-  
 32 mobiles when operated on alternative fuel; and

33 (ii) the driving range of those automobiles when operated on gasoline  
 34 or diesel fuel as compared to those automobiles when operated on alter-  
 35 native fuel.

36 (B) For dual fueled automobiles, the booklet published under paragraph  
 37 (1) also shall contain—

38 (i) information on the miles a gallon achieved by the automobiles  
 39 when operated on alternative fuel; and

1 (ii) a statement explaining how the information made available under  
 2 this paragraph can be expected to change when the automobile is oper-  
 3 ated on mixtures of alternative fuel and gasoline or diesel fuel.

4 (3) The Secretary of Energy shall publish and distribute the booklet. The  
 5 Administrator shall prescribe regulations requiring dealers to make the  
 6 booklet available to prospective buyers.

7 (d) DISCLOSURE.—A disclosure about fuel economy or estimated annual  
 8 fuel costs under this section does not establish a warranty under a law of  
 9 the United States or a State.

10 (e) VIOLATIONS.—A violation of subsection (b) of this section is—

11 (1) a violation of section 3 of the Automobile Information Disclosure  
 12 Act (15 U.S.C. 1232); and

13 (2) an unfair or deceptive act or practice in or affecting commerce  
 14 under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), ex-  
 15 cept sections 5(m) and 18 (15 U.S.C. 45(m), 57a).

16 (f) CONSULTATION.—The Administrator shall consult with the Federal  
 17 Trade Commission and the Secretaries of Transportation and Energy in  
 18 carrying out this section.

19 **§ 32909. Judicial review of regulations**

20 (a) FILING AND VENUE.—(1) A person that may be adversely affected  
 21 by a regulation prescribed in carrying out section 32901–32904 or 32908  
 22 of this title may apply for review of the regulation by filing a petition for  
 23 review in the United States Court of Appeals for the District of Columbia  
 24 Circuit or in the court of appeals of the United States for the circuit in  
 25 which the person resides or has its principal place of business.

26 (2) A person adversely affected by a regulation prescribed under section  
 27 32912(c)(1) of this title may apply for review of the regulation by filing a  
 28 petition for review in the court of appeals of the United States for the cir-  
 29 cuit in which the person resides or has its principal place of business.

30 (b) TIME FOR FILING AND JUDICIAL PROCEDURES.—The petition must  
 31 be filed not later than 59 days after the regulation is prescribed, except that  
 32 a petition for review of a regulation prescribing an amendment of a stand-  
 33 ard submitted to Congress under section 32902(c)(2) of this title must be  
 34 filed not later than 59 days after the end of the 60-day period referred to  
 35 in section 32902(c)(2). The clerk of the court shall send immediately a copy  
 36 of the petition to the Secretary of Transportation or the Administrator of  
 37 the Environmental Protection Agency, whoever prescribed the regulation.  
 38 The Secretary or the Administrator shall file with the court a record of the  
 39 proceeding in which the regulation was prescribed.

40 (c) ADDITIONAL PROCEEDINGS.—(1) When reviewing a regulation under  
 41 subsection (a)(1) of this section, the court, on request of the petitioner, may

1 order the Secretary or the Administrator to receive additional submissions  
 2 if the court is satisfied the additional submissions are material and there  
 3 were reasonable grounds for not presenting the submissions in the proceed-  
 4 ing before the Secretary or Administrator.

5 (2) The Secretary or the Administrator may amend or set aside the regu-  
 6 lation, or prescribe a new regulation because of the additional submissions  
 7 presented. The Secretary or Administrator shall file an amended or new reg-  
 8 ulation and the additional submissions with the court. The court shall re-  
 9 view a changed or new regulation.

10 (d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judg-  
 11 ment of a court under this section may be reviewed only by the Supreme  
 12 Court under section 1254 of title 28. A remedy under subsections (a)(1)  
 13 and (c) of this section is in addition to any other remedies provided by law.

14 **§ 32910. Administrative**

15 (a) GENERAL POWERS.—(1) In carrying out this chapter, the Secretary  
 16 of Transportation or the Administrator of the Environmental Protection  
 17 Agency may—

18 (A) inspect and copy records of any person at reasonable times;

19 (B) order a person to file written reports or answers to specific ques-  
 20 tions, including reports or answers under oath; and

21 (C) conduct hearings, administer oaths, take testimony, and subpoena  
 22 witnesses and records the Secretary or Administrator considers advis-  
 23 able.

24 (2) A witness summoned under paragraph (1)(C) of this subsection is en-  
 25 titled to the same fee and mileage the witness would have been paid in a  
 26 court of the United States.

27 (b) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpoena  
 28 or order of the Secretary or Administrator under subsection (a) of this sec-  
 29 tion may be brought in the district court of the United States for the judi-  
 30 cial district in which the proceeding by the Secretary or Administrator was  
 31 conducted. The court may punish a failure to obey an order of the court  
 32 to comply with the subpoena or order of the Secretary or Administrator as  
 33 a contempt of court.

34 (c) DISCLOSURE OF INFORMATION.—The Secretary and the Adminis-  
 35 trator shall disclose information obtained under this chapter (except infor-  
 36 mation obtained under section 32904(c) of this title) under section 552 of  
 37 title 5. However, the Secretary or Administrator may withhold information  
 38 under section 552(b)(4) of title 5 only if the Secretary or Administrator de-  
 39 cides that disclosure of the information would cause significant competitive  
 40 damage. A matter referred to in section 552(b)(4) and relevant to an ad-  
 41 ministrative or judicial proceeding under this chapter may be disclosed in

1 that proceeding. A measurement or calculation under section 32904(c) of  
 2 this title shall be disclosed under section 552 of title 5 without regard to  
 3 section 552(b).

4 (d) REGULATIONS.—The Administrator may prescribe regulations to  
 5 carry out duties of the Administrator under this chapter.

#### 6 **§ 32911. Compliance**

7 (a) GENERAL.—A person commits a violation if the person fails to comply  
 8 with this chapter and regulations and standards prescribed and orders is-  
 9 sued under this chapter (except sections 32902, 32903, 32908(b), and  
 10 32917(b) and regulations and standards prescribed and orders issued under  
 11 those sections). The Secretary of Transportation shall conduct a proceeding,  
 12 with an opportunity for a hearing on the record, to decide whether a person  
 13 has committed a violation. Any interested person may participate in a pro-  
 14 ceeding under this subsection.

15 (b) AUTOMOBILE MANUFACTURERS.—A manufacturer of automobiles  
 16 commits a violation if the manufacturer fails to comply with an applicable  
 17 average fuel economy standard under section 32902 of this title. Compliance  
 18 is determined after considering credits available to the manufacturer under  
 19 section 32903 of this title. If average fuel economy calculations under sec-  
 20 tion 32904(c) of this title indicate that a manufacturer has violated this  
 21 subsection, the Secretary shall conduct a proceeding, with an opportunity  
 22 for a hearing on the record, to decide whether a violation has been commit-  
 23 ted. The Secretary may not conduct the proceeding if further measurements  
 24 of fuel economy, further calculations of average fuel economy, or other in-  
 25 formation indicates a violation has not been committed. The results of the  
 26 measurements and calculations and the information shall be published in  
 27 the Federal Register. Any interested person may participate in a proceeding  
 28 under this subsection.

#### 29 **§ 32912. Civil penalties**

30 (a) GENERAL PENALTY.—A person that violates section 32911(a) of this  
 31 title is liable to the United States Government for a civil penalty of not  
 32 more than \$10,000 for each violation. A separate violation occurs for each  
 33 day the violation continues.

34 (b) PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY  
 35 STANDARDS.—Except as provided in subsection (c) of this section, a manu-  
 36 facturer that violates a standard prescribed for a model year under section  
 37 32902 of this title is liable to the Government for a civil penalty of \$5 mul-  
 38 tiplied by each .1 of a mile a gallon by which the applicable average fuel  
 39 economy standard under that section exceeds the average fuel economy—

(1)(A) calculated under section 32904(a)(1)(A) of this title for automobiles to which the standard applies manufactured by the manufacturer during the model year;

(B) multiplied by the number of those automobiles; and

(C) reduced by the credits available to the manufacturer under section 32903 of this title for the model year; and

(2)(A) calculated under section 32904(a)(1)(B) of this title for passenger automobiles manufactured by the manufacturer during the model year;

(B) multiplied by the number of those automobiles; and

(C) reduced by the credits available to the manufacturer under section 32903 of this title for the model year.

(c) HIGHER PENALTY AMOUNTS.—(1)(A) The Secretary of Transportation shall prescribe by regulation a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under subsection (b) of this section, if the Secretary decides that the increase in the penalty—

(i) will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed; and

(ii) will not have a substantial deleterious impact on the economy of the United States, a State, or a region of a State.

(B) The amount prescribed under subparagraph (A) of this paragraph may not be more than \$10 for each .1 of a mile a gallon.

(C) The Secretary may make a decision under subparagraph (A)(ii) of this paragraph only when the Secretary decides that it is likely that the increase in the penalty will not—

(i) cause a significant increase in unemployment in a State or a region of a State;

(ii) adversely affect competition; or

(iii) cause a significant increase in automobile imports.

(D) A higher amount prescribed under subparagraph (A) of this paragraph is effective for the model year beginning at least 18 months after the regulation stating the higher amount becomes final.

(2) The Secretary shall publish in the Federal Register a proposed regulation under this subsection and a statement of the basis for the regulation and provide each manufacturer of automobiles a copy of the proposed regulation and the statement. The Secretary shall provide a period of at least 45 days for written public comments on the proposed regulation. The Secretary shall submit a copy of the proposed regulation to the Federal Trade Commission and request the Commission to comment on the proposed regulation within that period. After that period, the Secretary shall give inter-

1 ested persons and the Commission an opportunity at a public hearing to  
 2 present oral information, views, and arguments and to direct questions  
 3 about disputed issues of material fact to—

4 (A) other interested persons making oral presentations;

5 (B) employees and contractors of the Government that made written  
 6 comments or an oral presentation or participated in the development  
 7 or consideration of the proposed regulation; and

8 (C) experts and consultants that provided information to a person  
 9 that the person includes, or refers to, in an oral presentation.

10 (3) The Secretary may restrict the questions of an interested person and  
 11 the Commission when the Secretary decides that the questions are dupli-  
 12 cative or not likely to result in a timely and effective resolution of the issues.  
 13 A transcript shall be kept of a public hearing under this subsection. A copy  
 14 of the transcript and written comments shall be available to the public at  
 15 the cost of reproduction.

16 (4) The Secretary shall publish a regulation prescribed under this sub-  
 17 section in the Federal Register with the decisions required under paragraph  
 18 (1) of this subsection.

19 (5) An officer or employee of a department, agency, or instrumentality  
 20 of the Government violates section 1905 of title 18 by disclosing, except in  
 21 an in camera proceeding by the Secretary or a court, information—

22 (A) provided to the Secretary or the court during consideration or  
 23 review of a regulation prescribed under this subsection; and

24 (B) decided by the Secretary to be confidential under section 11(d)  
 25 of the Energy Supply and Environmental Coordination Act of 1974 (15  
 26 U.S.C. 796(d)).

27 (d) WRITTEN NOTICE REQUIREMENT.—The Secretary shall impose a  
 28 penalty under this section by written notice.

29 **§ 32913. Compromising and remitting civil penalties**

30 (a) GENERAL AUTHORITY AND LIMITATIONS.—The Secretary of Trans-  
 31 portation may compromise or remit the amount of a civil penalty imposed  
 32 under section 32912(a) or (b) of this title. However, the amount of a pen-  
 33 alty imposed under section 32912(b) may be compromised or remitted only  
 34 to the extent—

35 (1) necessary to prevent the insolvency or bankruptcy of the manu-  
 36 facturer of automobiles;

37 (2) the manufacturer shows that the violation was caused by an act  
 38 of God, a strike, or a fire; or

39 (3) the Federal Trade Commission certifies under subsection (b)(1)  
 40 of this section that a reduction in the penalty is necessary to prevent  
 41 a substantial lessening of competition.



(b) PENALTY REDUCTION BY COMMISSION.—(1) A manufacturer liable for a civil penalty under section 32912(b) of this title may apply to the Commission for a certification that the penalty should be reduced to prevent a substantial lessening of competition in the segment of the motor vehicle industry subject to the standard that was violated. The Commission shall make the certification when it finds that reduction is necessary to prevent the lessening. The Commission shall state in the certification the maximum amount by which the penalty may be reduced.

(2) An application under this subsection must be made not later than 30 days after the Secretary decides that the manufacturer has violated section 32911(b) of this title. To the maximum extent practicable, the Commission shall make a decision on an application by the 90th day after the application is filed. A proceeding under this subsection may not delay the manufacturer's liability for the penalty for more than 90 days after the application is filed.

(3) When a civil penalty is collected in a civil action under this chapter before a decision of the Commission under this subsection is final, the payment shall be paid to the court in which the action was brought. The court shall deposit the payment in the general fund of the Treasury on the 90th day after the decision of the Commission becomes final. When the court is holding payment of a penalty reduced under subsection (a)(3) of this section, the Secretary shall direct the court to remit the appropriate amount of the penalty to the manufacturer.

#### **§ 32914. Collecting civil penalties**

(a) CIVIL ACTIONS.—If a person does not pay a civil penalty after it becomes a final order of the Secretary of Transportation or a judgment of a court of appeals of the United States for a circuit, the Attorney General shall bring a civil action in an appropriate district court of the United States to collect the penalty. The validity and appropriateness of the final order imposing the penalty is not reviewable in the action.

(b) PRIORITY OF CLAIMS.—A claim of a creditor against a bankrupt or insolvent manufacturer of automobiles has priority over a claim of the United States Government against the manufacturer for a civil penalty under section 32912(b) of this title when the creditor's claim is for credit extended before a final judgment (without regard to section 32913(b)(1) and (2) of this title) in an action to collect under subsection (a) of this section.

#### **§ 32915. Appealing civil penalties**

Any interested person may appeal a decision of the Secretary of Transportation to impose a civil penalty under section 32912(a) or (b) of this title, or of the Federal Trade Commission under section 32913(b)(1) of this title, in the United States Court of Appeals for the District of Columbia

Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. A person appealing a decision must file a notice of appeal with the court not later than 30 days after the decision and, at the same time, send a copy of the notice by certified mail to the Secretary or the Commission. The Secretary or the Commission promptly shall file with the court a certified copy of the record of the proceeding in which the decision was made.

#### **§ 32916. Reports to Congress**

(a) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary of Transportation shall submit to each House of Congress, and publish in the Federal Register, a report on the review by the Secretary of average fuel economy standards prescribed under this chapter.

(b) JOINT EXAMINATIONS AFTER GRANTING EXEMPTIONS.—(1) After an exemption has been granted under section 32904(b)(4) of this title, the Secretaries of Transportation and Labor shall conduct annually a joint examination of the extent to which section 32904(b)(4)—

(A) achieves the purposes of this chapter;

(B) improves fuel efficiency (thereby facilitating conservation of petroleum and reducing petroleum imports);

(C) has promoted employment in the United States related to automobile manufacturing;

(D) has not caused unreasonable harm to the automobile manufacturing sector in the United States; and

(E) has permitted manufacturers that have assembled passenger automobiles deemed to be manufactured domestically under section 32904(b)(1)(A) of this title thereafter to assemble in the United States passenger automobiles of the same model that have less than 75 percent of their value added in the United States or Canada, together with the reasons.

(2) The Secretary of Transportation shall include the results of the examination under paragraph (1) of this subsection in each report submitted under subsection (a) of this section more than 180 days after an exemption has been granted under section 32904(b)(4) of this title, or submit the results of the examination directly to Congress before the report is submitted when circumstances warrant.

#### **§ 32917. Standards for executive agency automobiles**

(a) DEFINITION.—In this section, “executive agency” has the same meaning given that term in section 105 of title 5.

(b) FLEET AVERAGE FUEL ECONOMY.—(1) The President shall prescribe regulations that require passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year to achieve a

fleet average fuel economy (determined under paragraph (2) of this subsection) for that year of at least the greater of—

(A) 18 miles a gallon; or

(B) the applicable average fuel economy standard under section 32902(b) or (c) of this title for the model year that includes January 1 of that fiscal year.

(2) Fleet average fuel economy is—

(A) the total number of passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year (except automobiles designed for combat-related missions, law enforcement work, or emergency rescue work); divided by

(B) the sum of the fractions obtained by dividing the number of automobiles of each model leased or bought by the fuel economy of that model.

### **§32918. Preemption**

(a) GENERAL.—When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation on fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.

(b) REQUIREMENTS MUST BE IDENTICAL.—When a requirement under section 32908 of this title is in effect, a State or a political subdivision of a State may adopt or enforce a law or regulation on disclosure of fuel economy or fuel operating costs for an automobile covered by section 32908 only if the law or regulation is identical to that requirement.

(c) STATE AND POLITICAL SUBDIVISION AUTOMOBILES.—A State or a political subdivision of a State may prescribe requirements for fuel economy for automobiles obtained for its own use.

## **CHAPTER 331—THEFT PREVENTION**

Sec.

- 33101. Definitions.
- 33102. Theft prevention standard for high theft lines.
- 33103. Theft prevention standard for other lines.
- 33104. Designation of high theft vehicle lines and parts.
- 33105. Cost limitations.
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- 33107. Voluntary vehicle identification standards.
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- 33109. National Stolen Passenger Motor Vehicle Information System.
- 33110. Verifications involving junk and salvage motor vehicles.
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- 33113. Theft reports.
- 33114. Prohibited acts.
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- 33116. Confidentiality of information.
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33118. Preemption of State and local law.

**§33101. Definitions**

In this chapter—

(1) “chop shop” means a building, lot, facility, or other structure or premise at which at least one person engages in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing a passenger motor vehicle or passenger motor vehicle part that has been unlawfully obtained—

(A) to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity of the vehicle or part, including the vehicle identification number or a derivative of that number; and

(B) to distribute, sell, or dispose of the vehicle or part in interstate or foreign commerce.

(2) “covered major part” means a major part selected under sections 33102(c)(1) and 33104 of this title for coverage by the vehicle theft prevention standard prescribed under section 33102 or 33103.

(3) “existing line” means a line introduced into commerce before January 1, 1990.

(4) “first purchaser” means the person making the first purchase other than for resale.

(5) “line” means a name that a manufacturer of motor vehicles applies to a group of motor vehicle models of the same make that have the same body or chassis, or otherwise are similar in construction or design.

(6) “major part” means—

(A) the engine;

(B) the transmission;

(C) each door to the passenger compartment;

(D) the hood;

(E) the grille;

(F) each bumper;

(G) each front fender;

(H) the deck lid, tailgate, or hatchback;

(I) each rear quarter panel;

(J) the trunk floor pan;

(K) the frame or, for a unitized body, the supporting structure serving as the frame; and

(L) any other part of a passenger motor vehicle that the Secretary of Transportation by regulation specifies as comparable in

1 design or function to any of the parts listed in subclauses (A)–  
2 (K) of this clause.

3 (7) “major replacement part” means a major part that is—

4 (A) an original major part in or on a completed motor vehicle  
5 and customized or modified after manufacture of the vehicle but  
6 before the time of its delivery to the first purchaser; or

7 (B) not installed in or on a motor vehicle at the time of its de-  
8 livery to the first purchaser and the equitable or legal title to the  
9 vehicle has not been transferred to a first purchaser.

10 (8) “model year” has the same meaning given that term in section  
11 32901(a) of this title.

12 (9) “new line” means a line introduced into commerce after Decem-  
13 ber 31, 1989.

14 (10) “passenger motor vehicle” includes a multipurpose passenger  
15 vehicle or light duty truck when that vehicle or truck is rated at not  
16 more than 6,000 pounds gross vehicle weight.

17 (11) “vehicle theft prevention standard” means a minimum perform-  
18 ance standard for identifying major parts of new motor vehicles and  
19 major replacement parts by inscribing or affixing numbers or symbols  
20 on those parts.

21 **§ 33102. Theft prevention standard for high theft lines**

22 (a) GENERAL.—(1) The Secretary of Transportation by regulation shall  
23 prescribe a vehicle theft prevention standard that conforms to the require-  
24 ments of this chapter. The standard shall apply to—

25 (A) covered major parts that manufacturers install in passenger  
26 motor vehicles in lines designated under section 33104 of this title as  
27 high theft lines; and

28 (B) major replacement parts for the major parts described in clause  
29 (A) of this paragraph.

30 (2) The standard may apply only to—

31 (A) major parts that manufacturers install in passenger motor vehi-  
32 cles having a model year designation later than the calendar year in  
33 which the standard takes effect; and

34 (B) major replacement parts manufactured after the standard takes  
35 effect.

36 (b) STANDARD REQUIREMENTS.—The standard shall be practicable and  
37 provide relevant objective criteria.

38 (c) LIMITATIONS ON MAJOR PART AND REPLACEMENT PART STAND-  
39 ARDS.—(1) For a major part installed by the manufacturer of the motor  
40 vehicle, the standard may not require a part to have more than one identi-  
41 fication.

(2) For a major replacement part, the standard may not require—

(A) identification of a part not designed as a replacement for a major part required to be identified under the standard; or

(B) the inscribing or affixing of identification except a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

(d) RECORDS AND REPORTS.—This chapter does not authorize the Secretary to require a person to keep records or make reports, except as provided in sections 33104(c), 33106(c), 33108(a), and 33112 of this title.

**§ 33103. Theft prevention standard for others lines**

(a) GENERAL.—Not later than October 25, 1994, the Secretary of Transportation shall prescribe a vehicle theft standard that conforms to the requirements of this chapter for covered major parts that manufacturers install in passenger motor vehicles (except light duty trucks) in not more than 50 percent of the lines not designated under section 33104 of this title as high theft lines.

(b) EXTENSION OF APPLICATION.—(1) Not later than 3 years after the standard is prescribed under subsection (a) of this section and based on the finding of the Attorney General under subsection (c) of this section to apply the standard, the Secretary shall apply that standard to covered major parts and major replacement parts for covered parts that manufacturers install in the lines of passenger motor vehicles (except light duty trucks)—

(A) not designated under section 33104 of this title as high theft lines; and

(B) not covered by the standard prescribed under subsection (a) of this section.

(2) The Secretary shall include as part of the regulatory proceeding under this subsection the finding of, and the record developed by, the Attorney General under subsection (c) of this section.

(c) INITIAL REVIEW OF EFFECTIVENESS.—Before the Secretary begins a regulatory proceeding under subsection (b) of this section, the Attorney General shall make a finding that the Secretary shall apply the standard prescribed under subsection (a) of this section unless the Attorney General finds, based on information collected and analyzed under section 33112 of this title and other information the Attorney General develops after providing notice and an opportunity for a public hearing, that applying the standard prescribed in subsection (a) to the remaining lines of passenger motor vehicles (except light duty trucks) not covered by that standard would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General also shall consider and include in the record additional costs, effectiveness, competition, and available alternative factors. The Attorney

1 General shall submit to the Secretary the finding and record on which the  
2 finding is based.

3 (d) LONG RANGE REVIEW OF EFFECTIVENESS.—(1) Not later than De-  
4 cember 31, 1999, the Attorney General shall make separate findings, after  
5 notice and an opportunity for a public hearing, on the following:

6 (A) whether the application of the standard under subsection (a) or  
7 (b) of this subsection, or both, have been effective in substantially in-  
8 hibiting the operation of chop shops and motor vehicle theft.

9 (B) whether the anti-theft devices for which the Secretary has grant-  
10 ed exemptions under section 33106 of this title are an effective sub-  
11 stitute for parts marking in substantially inhibiting motor vehicle theft.

12 (2)(A) In making the finding under paragraph (1)(A) of this subsection,  
13 the Attorney General shall—

14 (i) consider the additional cost, competition, and available alter-  
15 natives;

16 (ii) base that finding on information collected and analyzed under  
17 section 33112 of this title;

18 (iii) consider the effectiveness, the extent of use, and the extent to  
19 which civil and criminal penalties under section 33115(b) of this title  
20 and section 2322 of title 18 on chop shops have been effective in sub-  
21 stantially inhibiting operation of chop shops and motor vehicle theft;

22 (iv) base that finding on the 3-year and 5-year reports issued by the  
23 Secretary under section 33113 of this title; and

24 (v) base that finding on other information the Attorney General de-  
25 velops and includes in the public record.

26 (B) The Attorney General shall submit a finding under paragraph (1)(A)  
27 of this subsection promptly to the Secretary. If the Attorney General finds  
28 that the application of the standard under subsection (a) or (b) of this sec-  
29 tion, or both, has not been effective, the Secretary shall issue, not later than  
30 180 days after receiving that finding, an order terminating the standard the  
31 Attorney General found was ineffective. The termination is effective for the  
32 model year beginning after the order is issued.

33 (3) In making a finding under paragraph (1)(B) of this subsection, the  
34 Secretary shall consider the additional cost, competition, and available alter-  
35 natives. If the Attorney General finds that the anti-theft devices are an ef-  
36 fective substitute, the Secretary shall continue to grant exemptions under  
37 section 33106 of this title for the model years after model year 2000 at one  
38 of the following levels that the Attorney General decides: at the level author-  
39 ized before October 25, 1992, or at the level provided in section  
40 33106(b)(2)(C) of this title for model year 2000.

(e) EFFECTIVE DATE OF STANDARD.—A standard prescribed under this section takes effect at least 6 months after the date the standard is prescribed, except that the Secretary may prescribe an earlier effective date if the Secretary—

(1) decides with good cause that the earlier date is in the public interest; and

(2) publishes the reasons for the decision.

(f) NOTIFICATION OF CONGRESS.—The Secretary and the Attorney General shall inform the appropriate legislative committees of Congress with jurisdiction over this part and section 2322 of title 18 of actions taken or planned under this section.

#### **§ 33104. Designation of high theft vehicle lines and parts**

(a) DESIGNATION, NONAPPLICATION, SELECTION, AND PROCEDURES.—

(1) For purposes of the standard under section 33102 of this title, the following are high theft lines:

(A) a passenger motor vehicle line determined under subsection (b) of this section to have had a new passenger motor vehicle theft rate in the 2-year period covering calendar years 1990 and 1991 greater than the median theft rate for all new passenger motor vehicle thefts in that 2-year period.

(B) a passenger motor vehicle line initially introduced into commerce in the United States after December 31, 1989, that is selected under paragraph (3) of this subsection as likely to have a theft rate greater than the median theft rate referred to in clause (A) of this paragraph.

(C) subject to paragraph (2) of this subsection, a passenger motor vehicle line having (for existing lines) or likely to have (for new lines) a theft rate below the median theft rate referred to in clause (A) of this paragraph, if the major parts in the vehicles are selected under paragraph (3) of this subsection as interchangeable with the majority of the major parts that are subject to the standard and are contained in the motor vehicles of a line described in clause (A) or (B) of this paragraph.

(2) The standard may not apply to any major part of a line described in paragraph (1)(C) of this subsection if all the passenger motor vehicles of lines that are, or are likely to be, below the median theft rate, and that contain parts interchangeable with the major parts of the line involved, account (for existing lines), or the Secretary of Transportation determines they are likely to account (for new lines), for more than 90 percent of the total annual production of all lines of that manufacturer containing those interchangeable parts.



(3) The lines, and the major parts of the passenger motor vehicles in those lines, that are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary. If the manufacturer and the Secretary disagree on the selection, the Secretary shall select the lines and parts, after notice to the manufacturer and opportunity for written comment, and subject to the confidentiality requirements of this chapter.

(4) To the maximum extent practicable, the Secretary shall prescribe reasonable procedures designed to ensure that a selection under paragraph (3) of this subsection is made at least 6 months before the first applicable model year beginning after the selection.

(5) A manufacturer may not be required to comply with the standard under a selection under paragraph (3) of this subsection for a model year beginning earlier than 6 months after the date of the selection.

(6) A passenger motor vehicle line subject on October 25, 1992, to parts marking requirements under sections 602 and 603 of the Motor Vehicle Information and Cost Savings Act (Public Law 92–513, 86 Stat. 947), as added by section 101(a) of the Motor Vehicle Theft Law Enforcement Act of 1984 (Public Law 98–547, 98 Stat. 2756), continues to be subject to the requirements of this section and section 33102 of this title unless the line is exempted under section 33106 of this title.

(b) DETERMINING THEFT RATE FOR PASSENGER VEHICLES.—(1) In this subsection, “new passenger motor vehicle thefts”, when used in reference to a calendar year, means thefts in the United States in that year of passenger motor vehicles with the same model-year designation as that calendar year.

(2) Under subsection (a) of this section, the theft rate for passenger motor vehicles of a line shall be determined by a fraction—

(A) the numerator of which is the number of new passenger motor vehicle thefts for that line during the 2-year period referred to in subsection (a)(1)(A) of this section; and

(B) the denominator of which is the sum of the respective production volumes of all passenger motor vehicles of that line (as reported to the Administrator of the Environmental Protection Agency under chapter 329 of this title) that are of model years 1990 and 1991 and are distributed for sale in commerce in the United States.

(3) Under subsection (a) of this section, the median theft rate for all new passenger motor vehicle thefts during that 2-year period is the theft rate midway between the highest and the lowest theft rates determined under paragraph (2) of this subsection. If there is an even number of theft rates determined under paragraph (2), the median theft rate is the arithmetic average of the 2 adjoining theft rates midway between the highest and the lowest of those theft rates.

1 (4) In consultation with the Director of the Federal Bureau of Investiga-  
 2 tion, the Secretary periodically shall obtain from the most reliable source  
 3 accurate and timely theft and recovery information and publish the informa-  
 4 tion for review and comment. To the greatest extent possible, the Secretary  
 5 shall use theft information reported by United States Government, State,  
 6 and local police. After publication and opportunity for comment, the Sec-  
 7 retary shall use the theft information to determine the median theft rate  
 8 under this subsection. The Secretary and the Director shall take any nec-  
 9 essary actions to improve the accuracy, reliability, and timeliness of the in-  
 10 formation, including ensuring that vehicles represented as stolen are really  
 11 stolen.

12 (5) The Secretary periodically (but not more often than once every 2  
 13 years) shall prescribe by regulation the median theft rate under this sub-  
 14 section.

15 (c) PROVIDING INFORMATION.—The Secretary by regulation shall require  
 16 each manufacturer to provide information necessary to select under sub-  
 17 section (a)(3) of this section the high theft lines and the major parts to be  
 18 subject to the standard.

19 (d) APPLICATION.—Except as provided in section 33106 of this title, the  
 20 Secretary may not make the standard inapplicable to a line that has been  
 21 subject to the standard.

## 22 **§ 33105. Cost limitations**

23 (a) MAXIMUM MANUFACTURER COSTS.—A standard under section 33102  
 24 or 33103 of this title may not impose—

25 (1) on a manufacturer of motor vehicles, compliance costs of more  
 26 than \$15 a motor vehicle; or

27 (2) on a manufacturer of major replacement parts, compliance costs  
 28 for each part of more than the reasonable amount (but less than \$15)  
 29 that the Secretary of Transportation specifies in the standard.

30 (b) COSTS INVOLVED IN ENGINES AND TRANSMISSIONS.—For a manu-  
 31 facturer engaged in identifying engines or transmissions on October 25,  
 32 1984, in a way that substantially complies with the standard—

33 (1) the costs of identifying engines and transmissions may not be  
 34 considered in calculating the manufacturer's costs under subsection (a)  
 35 of this section; and

36 (2) the manufacturer may not be required under the standard to  
 37 conform to any identification system for engines and transmissions that  
 38 imposes greater costs on the manufacturer than are incurred under the  
 39 identification system used by the manufacturer on October 25, 1984.

40 (c) COST ADJUSTMENTS.—(1) In this subsection—

41 (A) “base period” means calendar year 1984.

1 (B) “price index” means the average over a calendar year of the  
 2 Consumer Price Index (all items—United States city average) pub-  
 3 lished monthly by the Secretary of Labor.

4 (2) At the beginning of each calendar year, as necessary data become  
 5 available from the Bureau of Labor Statistics, the Secretary of Labor shall  
 6 certify to the Secretary of Transportation and publish in the Federal Reg-  
 7 ister the percentage difference between the price index for the 12 months  
 8 before the beginning of the calendar year and the price index for the base  
 9 period. For model years beginning in that calendar year, the amounts speci-  
 10 fied in subsection (a) of this section shall be adjusted by the percentage dif-  
 11 ference.

12 **§33106. Exemption for passenger motor vehicles equipped**  
 13 **with anti-theft devices**

14 (a) DEFINITIONS.—In this section—

15 (1) “anti-theft device” means a device to reduce or deter theft that—

16 (A) is in addition to the theft-deterrent devices required by  
 17 motor vehicle safety standard numbered 114 in section 571.114 of  
 18 title 49, Code of Federal Regulations;

19 (B) the manufacturer believes will be effective in reducing or de-  
 20 terring theft of motor vehicles; and

21 (C) does not use a signaling device reserved by State law for  
 22 use on police, emergency, or official vehicles, or on schoolbuses.

23 (2) “standard equipment” means equipment already installed in a  
 24 motor vehicle when it is delivered from the manufacturer and not an  
 25 accessory or other item that the first purchaser customarily has the op-  
 26 tion to have installed.

27 (b) GRANTING EXEMPTIONS AND LIMITATIONS.—(1) A manufacturer  
 28 may petition the Secretary of Transportation for an exemption from a re-  
 29 quirement of a standard prescribed under section 33102 or 33103 of this  
 30 title for a line of passenger motor vehicles equipped as standard equipment  
 31 with an anti-theft device that the Secretary decides is likely to be as effec-  
 32 tive in reducing and deterring motor vehicle theft as compliance with the  
 33 standard.

34 (2) The Secretary may grant an exemption—

35 (A) for model year 1987, for not more than 2 lines of a manufac-  
 36 turer;

37 (B) for each of the model years 1988–1996, for not more than 2 ad-  
 38 ditional lines of a manufacturer;

39 (C) for each of the model years 1997–2000, for not more than one  
 40 additional line of a manufacturer; and

1 (D) for each of the model years after model year 2000, for the num-  
 2 ber of lines that the Attorney General decides under section  
 3 33103(d)(3) of this title.

4 (3) An additional exemption granted under subparagraph (2) (B) or (C)  
 5 of this paragraph does not affect an exemption previously granted.

6 (c) PETITIONING PROCEDURE.—A petition must be filed not later than  
 7 8 months before the start of production for the first model year covered by  
 8 the petition. The petition must include—

9 (1) a detailed description of the device;

10 (2) the reasons for the manufacturer's conclusion that the device will  
 11 be effective in reducing and deterring theft of motor vehicles; and

12 (3) additional information the Secretary reasonably may require to  
 13 make the decision described in subsection (b)(1) of this section.

14 (d) DECISIONS AND APPROVALS.—The Secretary shall make a decision  
 15 about a petition filed under this section not later than 120 days after the  
 16 date the petition is filed. A decision approving a petition must be based on  
 17 substantial evidence. The Secretary may approve a petition in whole or in  
 18 part. If the Secretary does not make a decision within the 120-day period,  
 19 the petition shall be deemed to be approved and the manufacturer shall be  
 20 exempt from the standard for the line covered by the petition for the subse-  
 21 quent model year.

22 (e) RESCISSIONS.—The Secretary may rescind an exemption if the Sec-  
 23 retary decides that the anti-theft device has not been as effective in reducing  
 24 and deterring motor vehicle theft as compliance with the standard. A rescis-  
 25 sion may be effective only—

26 (1) for a model year after the model year in which the rescission oc-  
 27 curs; and

28 (2) at least 6 months after the manufacturer receives written notice  
 29 of the rescission from the Secretary.

### 30 **§ 33107. Voluntary vehicle identification standards**

31 (a) ELECTION TO INSCRIBE OR AFFIX IDENTIFYING MARKS.—The Sec-  
 32 retary of Transportation by regulation may prescribe a vehicle theft preven-  
 33 tion standard under which a person may elect to inscribe or affix an identi-  
 34 fying number or symbol on major parts of a motor vehicle manufactured  
 35 or owned by the person for purposes of section 511 of title 18 and related  
 36 provisions. The standard may include provisions for registration of the iden-  
 37 tification with the Secretary or a person designated by the Secretary.

38 (b) STANDARD REQUIREMENTS.—The standard under this section shall  
 39 be practicable and provide relevant objective criteria.

(c) VOLUNTARY COMPLIANCE.—Compliance with the standard under this section is voluntary. Failure to comply does not subject a person to a penalty or enforcement under this chapter.

(d) COMPLIANCE WITH OTHER STANDARDS.—Compliance with the standard under this section does not relieve a manufacturer from a requirement of a standard prescribed under section 33102 or 33103 of this title.

**§ 33108. Monitoring compliance of manufacturers**

(a) RECORDS, REPORTS, INFORMATION, AND INSPECTION.—To enable the Secretary of Transportation to decide whether a manufacturer of motor vehicles containing a part subject to a standard prescribed under section 33102 or 33103 of this title, or a manufacturer of major replacement parts subject to the standard, is complying with this chapter and the standard, the Secretary may require the manufacturer to—

(1) keep records;

(2) make reports;

(3) provide items and information; and

(4) allow an officer or employee designated by the Secretary to inspect the vehicles and parts and relevant records of the manufacturer.

(b) ENTRY AND INSPECTION.—To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in which motor vehicles containing major parts subject to the standard, or major replacement parts subject to the standard, are manufactured, held for introduction into interstate commerce, or held for sale after introduction into interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(c) CERTIFICATION OF COMPLIANCE.—(1) A manufacturer of a motor vehicle subject to the standard, and a manufacturer of a major replacement part subject to the standard, shall provide at the time of delivery of the vehicle or part a certification that the vehicle or part conforms to the applicable motor vehicle theft prevention standard. The certification shall accompany the vehicle or part until its delivery to the first purchaser. The Secretary by regulation may prescribe the type and form of the certification.

(2) This subsection does not apply to a motor vehicle or major replacement part that is—

(A) intended only for export;

(B) labeled only for export on the vehicle or replacement part and the outside of any container until exported; and

(C) exported.

(d) NOTIFICATION OF ERROR.—A manufacturer shall notify the Secretary if the manufacturer discovers that—

(1) there is an error in the identification (required by the standard) applied to a major part installed by the manufacturer in a motor vehicle during its assembly, or to a major replacement part manufactured by the manufacturer; and

(2) the motor vehicle or major replacement part has entered interstate commerce.

**§ 33109. National Stolen Passenger Motor Vehicle Information System**

(a) GENERAL REQUIREMENTS.—(1) Not later than July 25, 1993, the Attorney General shall establish, and thereafter maintain, a National Stolen Passenger Motor Vehicle Information System containing the vehicle identification numbers of stolen passenger motor vehicles and stolen passenger motor vehicle parts. The System shall be located in the National Crime Information Center and shall include at least the following information on each passenger motor vehicle reported to a law enforcement authority as stolen and not recovered:

(A) the vehicle identification number.

(B) the make and model year.

(C) the date on which the vehicle was reported as stolen.

(D) the location of the law enforcement authority that received the report of the theft of the vehicle.

(E) the identification numbers of the vehicle parts (or derivatives of those numbers), at the time of the theft, if those numbers are different from the vehicle identification number of the vehicle.

(2) In establishing the System, the Attorney General shall consult with—

(A) State and local law enforcement authorities; and

(B) the National Crime Information Center Policy Advisory Board to ensure the security of the information in the System and that the System will not compromise the security of stolen passenger motor vehicle and passenger motor vehicle parts information in the System.

(3) If the Attorney General decides that the Center is not able to perform the functions of the System, the Attorney General shall make an agreement for the operation of the System separate from the Center.

(4) The Attorney General shall prescribe by regulation the effective date of the System.

(b) REQUESTS FOR INFORMATION.—(1) The Attorney General shall prescribe by regulation procedures under which an individual or entity intending to transfer a passenger motor vehicle or passenger motor vehicle part may obtain information on whether the vehicle or part is listed in the System as stolen.

1 (2) On request of an insurance carrier, a person lawfully selling or dis-  
 2 tributing passenger motor vehicle parts in interstate commerce, or an indi-  
 3 vidual or enterprise engaged in the business of repairing passenger motor  
 4 vehicles, the Attorney General (or the entity the Attorney General des-  
 5 ignates) immediately shall inform the insurance carrier, person, individual,  
 6 or enterprise whether the System has a record of a vehicle or vehicle part  
 7 with a particular vehicle identification number (or derivative of that num-  
 8 ber) being reported as stolen. The Attorney General may require appro-  
 9 priate verification to ensure that the request is legitimate and will not com-  
 10 promise the security of the System.

11 (c) ADVISORY COMMITTEE.—(1) Not later than December 24, 1992, the  
 12 Attorney General shall establish in the Department of Justice an advisory  
 13 committee. The Attorney General shall develop the System with the advice  
 14 and recommendations of the committee.

15 (2)(A) The committee is composed of the following 10 members:

- 16 (i) the Attorney General.
- 17 (ii) the Secretary of Transportation.
- 18 (iii) one individual who is qualified to represent the interests of the  
 19 law enforcement community at the State level.
- 20 (iv) one individual who is qualified to represent the interests of the  
 21 law enforcement community at the local level.
- 22 (v) one individual who is qualified to represent the interests of the  
 23 automotive recycling industry.
- 24 (vi) one individual who is qualified to represent the interests of the  
 25 automotive repair industry.
- 26 (vii) one individual who is qualified to represent the interests of the  
 27 automotive rebuilders industry.
- 28 (viii) one individual who is qualified to represent the interests of the  
 29 automotive parts suppliers industry.
- 30 (ix) one individual who is qualified to represent the interests of the  
 31 insurance industry.
- 32 (x) one individual who is qualified to represent the interests of con-  
 33 sumers.

34 (B) The Attorney General shall appoint the individuals described in sub-  
 35 paragraph (A)(iii)–(x) of this paragraph and shall serve as chairman of the  
 36 committee.

37 (3) The committee shall make recommendations on developing and carry-  
 38 ing out—

- 39 (A) the National Stolen Passenger Motor Vehicle Information Sys-  
 40 tem; and
- 41 (B) the verification system under section 33110 of this title.

(4) Not later than April 25, 1993, the committee shall submit to the Attorney General, the Secretary, and Congress a report including the recommendations of the committee.

**§ 33110. Verifications involving junk and salvage motor vehicles**

(a) DEFINITION.—In this section, “vehicle identification number” means a unique identification number (or derivative of that number) assigned to a passenger motor vehicle by a manufacturer in compliance with applicable regulations.

(b) GENERAL REQUIREMENTS.—(1) If an insurance carrier selling comprehensive motor vehicle insurance coverage obtains possession of and transfers a junk motor vehicle or a salvage motor vehicle, the carrier shall—

(A) under procedures the Attorney General prescribes by regulation under section 33109 of this title in consultation with the Secretary of Transportation, verify whether the vehicle is reported as stolen; and

(B) provide the purchaser or transferee of the vehicle from the insurance carrier verification identifying the vehicle identification number and verifying that the vehicle has not been reported as stolen or, if reported as stolen, that the carrier has recovered the vehicle and has proper legal title to the vehicle.

(2)(A) This subsection does not prohibit an insurance carrier from transferring a motor vehicle if, within a reasonable period of time during normal business operations (as decided by the Attorney General under section 33109 of this title) using reasonable efforts, the carrier—

(i) has not been informed under the procedures prescribed in section 33109 of this title that the vehicle has not been reported as stolen; or

(ii) has not otherwise established whether the vehicle has been reported as stolen.

(B) When a carrier transfers a motor vehicle for which the carrier has not established whether the vehicle has been reported as stolen, the carrier shall provide written certification to the transferee that the carrier has not established whether the vehicle has been reported as stolen.

(c) REGULATIONS.—In consultation with the Secretary, the Attorney General shall prescribe regulations necessary to ensure that verification performed and provided by an insurance carrier under subsection (b)(1)(B) of this section is uniform, effective, and resistant to fraudulent use.

**§ 33111. Verifications involving motor vehicle major parts**

(a) GENERAL REQUIREMENTS.—A person engaged in the business of salvaging, dismantling, recycling, or repairing passenger motor vehicles may not knowingly sell in commerce or transfer or install a major part marked with an identification number without—



(1) first establishing, through a procedure the Attorney General by regulation prescribes in consultation with the Secretary of Transportation under section 33109 of this title, that the major part has not been reported as stolen; and

(2) providing the purchaser or transferee with a verification—

(A) identifying the vehicle identification number (or derivative of that number) of that major part; and

(B) verifying that the major part has not been reported as stolen.

(b) NONAPPLICATION.—(1) Subsection (a) of this section does not apply to a person that—

(A) is the manufacturer of the major part;

(B) has purchased the major part directly from the manufacturer;

or

(C) has received a verification from an insurance carrier under section 33110 of this title that the motor vehicle from which the major part is derived has not been reported as stolen, or that the carrier has not established whether that vehicle has been stolen.

(2) A person described under paragraph (1)(C) of this subsection that subsequently transfers or sells in commerce the motor vehicle or a major part of the vehicle shall provide the verification received from the carrier to the person to whom the vehicle or part is transferred or sold.

(c) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this section. The regulations shall include regulations prescribed in consultation with the Secretary that are necessary to ensure that a verification a person provides under subsection (a)(2) of this section is uniform, effective, and resistant to fraudulent use.

### **§ 33112. Insurance reports and information**

(a) PURPOSES.—The purposes of this section are—

(1) to prevent or discourage the theft of motor vehicles, particularly those stolen for the removal of certain parts;

(2) to prevent or discourage the sale and distribution in interstate commerce of used parts that are removed from those vehicles; and

(3) to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

(b) DEFINITIONS.—In this section—

(1) “insurer” includes a person (except a governmental authority) having a fleet of at least 20 motor vehicles that are used primarily for rental and are not covered by a theft insurance policy issued by an insurer of passenger motor vehicles.

1 (2) “motor vehicle” includes a truck, a multipurpose passenger vehi-  
2 cle, and a motorcycle.

3 (c) ANNUAL INFORMATION REQUIREMENT.—(1) An insurer providing  
4 comprehensive coverage for motor vehicles shall provide annually to the Sec-  
5 retary of Transportation information on—

6 (A) the thefts and recoveries (in any part) of motor vehicles;

7 (B) the number of vehicles that have been recovered intact;

8 (C) the rating rules and plans, such as loss information and rating  
9 characteristics, used by the insurer to establish premiums for com-  
10 prehensive coverage, including the basis for the premiums, and pre-  
11 mium penalties for motor vehicles considered by the insurer as more  
12 likely to be stolen;

13 (D) the actions taken by the insurer to reduce the premiums, includ-  
14 ing changing rate levels for comprehensive coverage because of a reduc-  
15 tion in thefts of motor vehicles;

16 (E) the actions taken by the insurer to assist in deterring or reduc-  
17 ing thefts of motor vehicles; and

18 (F) other information the Secretary requires to carry out this chap-  
19 ter and to make the report and findings required by this chapter.

20 (2) The information on thefts and recoveries shall include an explanation  
21 on how the information is obtained, the accuracy and timeliness of the infor-  
22 mation, and the use made of the information, including the extent and fre-  
23 quency of reporting the information to national, public, and private entities  
24 such as the Federal Bureau of Investigation and State and local police.

25 (d) REPORTS ON REDUCED CLAIMS PAYMENTS.—An insurer shall report  
26 promptly in writing to the Secretary if the insurer, in paying a claim under  
27 an adjustment or negotiation between the insurer and the insured for a sto-  
28 len motor vehicle—

29 (1) reduces the payment to the insured by the amount of the value,  
30 salvage or otherwise, of a recovered part subject to a standard pre-  
31 scribed under section 33102 or 33103 of this title; and

32 (2) the reduction is not made at the express election of the insured.

33 (e) GENERAL EXEMPTIONS.—The Secretary shall exempt from this sec-  
34 tion, for one or more years, an insurer that the Secretary decides should  
35 be exempted because—

36 (1) the cost of preparing and providing the information is excessive  
37 in relation to the size of the insurer’s business; and

38 (2) the information from that insurer will not contribute significantly  
39 to carrying out this chapter.

40 (f) SMALL INSURER EXEMPTIONS.—(1) In this subsection, “small in-  
41 surer” means an insurer whose premiums for motor vehicle insurance issued

1 directly or through an affiliate, including a pooling arrangement established  
 2 under State law or regulation for the issuance of motor vehicle insurance,  
 3 account for—

4 (A) less than one percent of the total premiums for all forms of  
 5 motor vehicle insurance issued by insurers in the United States; and

6 (B) less than 10 percent of the total premiums for all forms of motor  
 7 vehicle insurance issued by insurers in any State.

8 (2) The Secretary shall exempt by regulation a small insurer from this  
 9 section if the Secretary finds that the exemption will not significantly affect  
 10 the validity or usefulness of the information collected and compiled under  
 11 this section, nationally or State-by-State. However, the Secretary may not  
 12 exempt an insurer under this paragraph that is considered an insurer only  
 13 because of subsection (b)(1) of this section.

14 (3) Regulations under this subsection shall provide that eligibility as a  
 15 small insurer shall be based on the most recent calendar year for which ade-  
 16 quate information is available, and that, once attained, the eligibility shall  
 17 continue without further demonstration of eligibility for one or more years,  
 18 as the Secretary considers appropriate.

19 (g) PRESCRIBED FORM.—Information required by this section shall be  
 20 provided in the form the Secretary prescribes.

21 (h) PERIODIC COMPILATIONS.—Subject to section 552 of title 5, the Sec-  
 22 retary periodically shall compile and publish information obtained by the  
 23 Secretary under this section, in a form that will be helpful to the public,  
 24 the police, and Congress.

25 (i) CONSULTATION.—In carrying out this section, the Secretary shall con-  
 26 sult with public and private agencies and associations the Secretary consid-  
 27 ers appropriate.

### 28 **§ 33113. Theft reports**

29 (a) TRUCK, MULTIPURPOSE PASSENGER VEHICLE, AND MOTORCYCLE  
 30 REPORT.—Not later than October 25, 1995, the Secretary of Transpor-  
 31 tation shall submit a report to Congress that includes—

32 (1) information on the number of trucks, multipurpose passenger ve-  
 33 hicles, and motorcycles distributed for sale in interstate commerce that  
 34 are stolen and recovered annually, compiled by model, make, and line;

35 (2) information on the extent to which trucks, multipurpose pas-  
 36 senger vehicles, and motorcycles stolen annually are dismantled to re-  
 37 cover parts or are exported;

38 (3) a description of the market for the stolen parts;

39 (4) information on the premiums charged by insurers of comprehen-  
 40 sive coverage of trucks, multipurpose passenger vehicles, or motor-

cycles, including any increase in the premiums charged because any of those motor vehicles is a likely candidate for theft;

(5) an assessment of whether the identification of parts of trucks, multipurpose passenger vehicles, and motorcycles is likely—

(A) to decrease the theft rate of those motor vehicles;

(B) to increase the recovery rate of those motor vehicles;

(C) to decrease the trafficking in stolen parts of those motor vehicles;

(D) to stem the export and import of those stolen motor vehicles or parts; or

(E) to have benefits greater than the costs of the identification; and

(6) recommendations on whether, and to what extent, the identification of trucks, multipurpose passenger vehicles, and motorcycles should be required by law.

(b) MOTOR VEHICLE REPORT.—Not later than October 25, 1997, the Secretary shall submit a report to Congress that includes—

(1) information on—

(A) the methods and procedures used by public and private entities to collect, compile, and disseminate information on the theft and recovery of motor vehicles, including classes of motor vehicles; and

(B) the reliability and timeliness of the information and how the information can be improved;

(2) information on the number of motor vehicles distributed for sale in interstate commerce that are stolen and recovered annually, compiled by class, model, make, and line;

(3) information on the extent to which motor vehicles stolen annually are dismantled to recover parts or are exported;

(4) a description of the market for the stolen parts;

(5) information on—

(A) the costs to manufacturers and purchasers of passenger motor vehicles of compliance with the standards prescribed under this chapter;

(B) the beneficial impacts of the standards and the monetary value of the impacts; and

(C) the extent to which the monetary value is greater than the costs;

(6) information on the experience of officials of the United States Government, States, and localities in—

1 (A) making arrests and successfully prosecuting persons for vio-  
2 lating a law set forth in title II or III of the Motor Vehicle Theft  
3 Law Enforcement Act of 1984;

4 (B) preventing or reducing the number and rate of thefts of  
5 motor vehicles that are dismantled for parts subject to this chap-  
6 ter; and

7 (C) preventing or reducing the availability of used parts that  
8 are stolen from motor vehicles subject to this chapter;

9 (7) information on the premiums charged by insurers of comprehen-  
10 sive coverage of motor vehicles subject to this chapter, including any  
11 increase in the premiums charged because a motor vehicle is a likely  
12 candidate for theft, and the extent to which the insurers have reduced  
13 for the benefit of consumers the premiums, or foregone premium in-  
14 creases, because of this chapter;

15 (8) information on the adequacy and effectiveness of laws of the  
16 United States and the States aimed at preventing the distribution and  
17 sale of used parts that have been removed from stolen motor vehicles  
18 and the adequacy of systems available to enforcement personnel for  
19 tracing parts to determine if they have been stolen from a motor vehi-  
20 cle;

21 (9) an assessment of whether the identification of parts of other  
22 classes of motor vehicles is likely—

23 (A) to decrease the theft rate of those vehicles;

24 (B) to increase the recovery rate of those vehicles;

25 (C) to decrease the trafficking in stolen parts of those vehicles;

26 (D) to stem the export and import of those stolen vehicles,  
27 parts, or components; or

28 (E) to have benefits greater than the costs of the identification;

29 and

30 (10) other relevant and reliable information available to the Sec-  
31 retary about the impact, including the beneficial impact, of the laws set  
32 forth in titles II and III of the Motor Vehicle Theft Law Enforcement  
33 Act of 1984 on law enforcement, consumers, and manufacturers; and

34 (11) recommendations (including, as appropriate, legislative and ad-  
35 ministrative recommendations) for—

36 (A) continuing without change the standards prescribed under  
37 this chapter;

38 (B) amending this chapter to cover more or fewer lines of pas-  
39 senger motor vehicles;

40 (C) amending this chapter to cover other classes of motor vehi-  
41 cles; or

1 (D) ending the standards for all future motor vehicles.

2 (c) BASES OF REPORTS.—(1) The reports under subsections (a) and (b)  
3 of this section each shall be based on—

4 (A) information reported under this chapter by insurers of motor ve-  
5 hicles and manufacturers of motor vehicles and major replacement  
6 parts;

7 (B) information provided by the Federal Bureau of Investigation;

8 (C) experience obtained in carrying out this chapter;

9 (D) experience of the Government under the laws set forth in titles  
10 II and III of the Motor Vehicle Theft Law Enforcement Act of 1984;  
11 and

12 (E) other relevant and reliable information available to the Sec-  
13 retary.

14 (2) In preparing each report, the Secretary shall consult with the Attor-  
15 ney General and State and local law enforcement officials, as appropriate.

16 (3) The report under subsection (b) of this section shall—

17 (A) cover a period of at least 4 years after the standards required  
18 by this chapter are prescribed; and

19 (B) reflect any information, as appropriate, from the report under  
20 subsection (a) of this section, updated from the date of the report.

21 (4) At least 90 days before submitting each report to Congress, the Sec-  
22 retary shall publish a proposed report for public review and an opportunity  
23 of at least 45 days for written comment. The Secretary shall consider those  
24 comments in preparing the report to be submitted and include a summary  
25 of the comments with the submitted report.

26 **§ 33114. Prohibited acts**

27 (a) GENERAL.—A person may not—

28 (1) manufacture for sale, sell, offer for sale, introduce or deliver for  
29 introduction in interstate commerce, or import into the United States,  
30 a motor vehicle or major replacement part subject to a standard pre-  
31 scribed under section 33102 or 33103 of this title, unless it conforms  
32 to the standard;

33 (2) fail to comply with a regulation prescribed by the Secretary of  
34 Transportation or Attorney General under this chapter;

35 (3) fail to keep specified records, refuse access to or copying of  
36 records, fail to make reports or provide items or information, or fail  
37 or refuse to allow entry or inspection, as required by this chapter;

38 (4) fail to provide the certification required by section 33108(c) of  
39 this title, or provide a certification that the person knows, or in the  
40 exercise of reasonable care has reason to know, is false or misleading  
41 in a material respect; or

(5) knowingly—

(A) own, operate, maintain, or control a chop shop;

(B) conduct operations in a chop shop; or

(C) transport a passenger motor vehicle or passenger motor vehicle part to or from a chop shop.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to a person establishing that in the exercise of reasonable care the person did not have reason to know that the motor vehicle or major replacement part was not in conformity with the standard.

### **§ 33115. Civil penalties and enforcement**

(a) GENERAL PENALTY AND CIVIL ACTIONS TO COLLECT.—(1) A person that violates section 33114(a)(1)–(4) of this title is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under section 33102 or 33103 of this title is only a single violation. The maximum penalty under this subsection for a related series of violations is \$250,000.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The Secretary may compromise the amount of a penalty.

(3) In determining the amount of a civil penalty or compromise under this subsection, the Secretary shall consider the size of the person's business and the gravity of the violation.

(4) The Attorney General shall bring a civil action in a United States district court to collect a civil penalty imposed under this subsection.

(5) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(b) CHOP SHOP PENALTY AND ENFORCEMENT.—(1) A person that violates section 33114(a)(5) of this title is liable to the Government for a civil penalty of not more than \$100,000 a day for each violation.

(2) As appropriate and in consultation with the Attorney General, the Secretary shall—

(A) bring a civil action for a temporary or permanent injunction to restrain a person violating section 33114(a)(5) of this section;

(B) impose and recover the penalty described in paragraph (1) of this subsection; or

(C) take both the actions described in clauses (A) and (B) of this paragraph.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a civil action in a United States district court to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction

1 in interstate commerce, or importation into the United States, of a pas-  
 2 senger motor vehicle containing a major part, or of a major replacement  
 3 part, that is subject to the standard and is determined before the sale of  
 4 the vehicle or part to a first purchaser not to conform to the standard.

5 (2)(A) When practicable, the Secretary—

6 (i) shall notify a person against whom an action under this sub-  
 7 section is planned;

8 (ii) shall give the person an opportunity to present that person's  
 9 views; and

10 (iii) except for a knowing and willful violation, shall give the person  
 11 a reasonable opportunity to comply.

12 (B) The failure of the Secretary to comply with subparagraph (A) of this  
 13 paragraph does not prevent a court from granting appropriate relief.

14 (d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating  
 15 an injunction or restraining order issued under subsection (c) of this sec-  
 16 tion, the violation of which is also a violation of this chapter, the defendant  
 17 may demand a jury trial. The defendant shall be tried as provided in rule  
 18 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

19 (e) VENUE.—A civil action under subsection (a) or (c) of this section may  
 20 be brought in the judicial district in which the violation occurred or the de-  
 21 fendant resides, is found, or transacts business. Process in the action may  
 22 be served in any other judicial district in which the defendant resides or is  
 23 found. A subpoena for a witness in the action may be served in any judicial  
 24 district.

## 25 **§ 33116. Confidentiality of information**

26 (a) GENERAL.—Information obtained by the Secretary of Transportation  
 27 under this chapter related to a confidential matter referred to in section  
 28 1905 of title 18 may be disclosed only—

29 (1) to another officer or employee of the United States Government  
 30 for use in carrying out this chapter; or

31 (2) in a proceeding under this chapter (except a proceeding under  
 32 section 33104(a)(3)).

33 (b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does  
 34 not authorize information to be withheld from a committee of Congress au-  
 35 thorized to have the information.

## 36 **§ 33117. Judicial review**

37 A person that may be adversely affected by a regulation prescribed under  
 38 this chapter may obtain judicial review of the regulation under section  
 39 32909 of this title. A remedy under this section is in addition to any other  
 40 remedies provided by law.



**§ 33118. Preemption of State and local law**

When a motor vehicle theft prevention standard prescribed under section 33102 or 33103 of this title is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part.

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# **§ 40101. Policy**

(a) ECONOMIC REGULATION.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity:

(1) assigning and maintaining safety as the highest priority in air commerce.

(2) before authorizing new air transportation services, evaluating the safety implications of those services.

(3) preventing deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and to maintain the safety vigilance that has evolved in air transportation and air commerce and has come to be expected by the traveling and shipping public.

(4) the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices.

(5) coordinating transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.

(6) placing maximum reliance on competitive market forces and on actual and potential competition—

(A) to provide the needed air transportation system; and

(B) to encourage efficient and well-managed air carriers to earn adequate profits and attract capital, considering any material differences between interstate air transportation and foreign air transportation.

(7) developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—

(A) the commerce of the United States;

(B) the United States Postal Service; and

(C) the national defense.

(8) encouraging air transportation at major urban areas through secondary or satellite airports if consistent with regional airport plans of regional and local authorities, and if endorsed by appropriate State authorities—

(A) encouraging the transportation by air carriers that provide, in a specific market, transportation exclusively at those airports; and

(B) fostering an environment that allows those carriers to establish themselves and develop secondary or satellite airport services.

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase rates, reduce services, or exclude competition in air transportation.

(11) maintaining a complete and convenient system of continuous scheduled interstate air transportation for small communities and isolated areas with direct financial assistance from the United States Government when appropriate.

(12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—

(A) to provide efficiency, innovation, and low rates; and

(B) to decide on the variety and quality of, and determine rates for, air transportation services.

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

(14) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(15) strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(b) ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others and in addition to the matters referred to in subsection (a) of this section, as being in the public interest for all-cargo air transportation:

(1) encouraging and developing an expedited all-cargo air transportation system provided by private enterprise and responsive to—

(A) the present and future needs of shippers;

(B) the commerce of the United States; and

(C) the national defense.

(2) encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided.

(3) providing services without unreasonable discrimination, unfair or deceptive practices, or predatory pricing.

(c) GENERAL SAFETY CONSIDERATIONS.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator of the Federal Aviation Administration shall consider the following matters:

(1) the requirements of national defense and commercial and general aviation.

(2) the public right of freedom of transit through the navigable airspace.

(d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator shall consider the following matters, among others, as being in the public interest:

(1) regulating air commerce in a way that best promotes its development and safety and fulfills national defense requirements.

(2) promoting, encouraging, and developing civil aeronautics.

(3) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations.

(4) consolidating research and development for air navigation facilities and the installation and operation of those facilities.

(5) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

(6) providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States international air transportation policy, the Secretaries of State and Transportation shall develop a negotiating policy emphasizing the greatest degree of competition compatible with a well-functioning international air transportation system, including the following:

(1) strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(2) freedom of air carriers and foreign air carriers to offer rates that correspond to consumer demand.

(3) the fewest possible restrictions on charter air transportation.

(4) the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand.

(5) eliminating operational and marketing restrictions to the greatest extent possible.

(6) integrating domestic and international air transportation.

(7) increasing the number of nonstop United States gateway cities.

(8) opportunities for carriers of foreign countries to increase their access to places in the United States if exchanged for benefits of similar magnitude for air carriers or the traveling public with permanent linkage between rights granted and rights given away.

(9) eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including—

(A) excessive landing and user fees;

(B) unreasonable ground handling requirements;

(C) unreasonable restrictions on operations;

(D) prohibitions against change of gauge; and

(E) similar restrictive practices.

(10) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(f) **STRENGTHENING COMPETITION.**—In selecting an air carrier to provide foreign air transportation from among competing applicants, the Secretary of Transportation shall consider, in addition to the matters specified in subsections (a) and (b) of this section, the strengthening of competition among air carriers operating in the United States to prevent unreasonable concentration in the air carrier industry.

## **§ 40102. Definitions**

(a) **GENERAL DEFINITIONS.**—In this part—

(1) “aeronautics” means the science and art of flight.

(2) “air carrier” means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

(3) “air commerce” means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that

1 directly affects, or may endanger safety in, foreign or interstate air  
2 commerce.

3 (4) “air navigation facility” means a facility used, available for use,  
4 or designed for use, in aid of air navigation, including—

5 (A) a landing area;

6 (B) a light;

7 (C) apparatus or equipment for distributing weather informa-  
8 tion, signaling, radio-directional finding, or radio or other electro-  
9 magnetic communication; and

10 (D) another structure or mechanism for guiding or controlling  
11 flight in the air or the landing and takeoff of aircraft.

12 (5) “air transportation” means foreign air transportation, interstate  
13 air transportation, or the transportation of mail by aircraft.

14 (6) “aircraft” means any contrivance invented, used, or designed to  
15 navigate, or fly in, the air.

16 (7) “aircraft engine” means an engine used, or intended to be used,  
17 to propel an aircraft, including a part, appurtenance, and accessory of  
18 the engine, except a propeller.

19 (8) “airman” means an individual—

20 (A) in command, or as pilot, mechanic, or member of the crew,  
21 who navigates aircraft when under way;

22 (B) except to the extent the Administrator of the Federal Avia-  
23 tion Administration may provide otherwise for individuals em-  
24 ployed outside the United States, who is directly in charge of in-  
25 specting, maintaining, overhauling, or repairing aircraft, aircraft  
26 engines, propellers, or appliances; or

27 (C) who serves as an aircraft dispatcher or air traffic control-  
28 tower operator.

29 (9) “airport” means a landing area used regularly by aircraft for re-  
30 ceiving or discharging passengers or cargo.

31 (10) “all-cargo air transportation” means the transportation by air-  
32 craft in interstate air transportation of only property or only mail, or  
33 both.

34 (11) “appliance” means an instrument, equipment, apparatus, a  
35 part, an appurtenance, or an accessory used, capable of being used, or  
36 intended to be used, in operating or controlling aircraft in flight, in-  
37 cluding a parachute, communication equipment, and another mecha-  
38 nism installed in or attached to aircraft during flight, and not a part  
39 of an aircraft, aircraft engine, or propeller.

40 (12) “cargo” means property, mail, or both.

1 (13) “charter air carrier” means an air carrier holding a certificate  
 2 of public convenience and necessity that authorizes it to provide charter  
 3 air transportation.

4 (14) “charter air transportation” means charter trips in air trans-  
 5 portation authorized under this part.

6 (15) “citizen of the United States” means—

7 (A) an individual who is a citizen of the United States;

8 (B) a partnership each of whose partners is an individual who  
 9 is a citizen of the United States; or

10 (C) a corporation or association organized under the laws of the  
 11 United States or a State, the District of Columbia, or a territory  
 12 or possession of the United States, of which the president and at  
 13 least two-thirds of the board of directors and other managing offi-  
 14 cers are citizens of the United States, and in which at least 75  
 15 percent of the voting interest is owned or controlled by persons  
 16 that are citizens of the United States.

17 (16) “civil aircraft” means an aircraft except a public aircraft.

18 (17) “civil aircraft of the United States” means an aircraft reg-  
 19 istered under chapter 441 of this title.

20 (18) “conditional sales contract” means a contract—

21 (A) for the sale of an aircraft, aircraft engine, propeller, appli-  
 22 ance, or spare part, under which the buyer takes possession of the  
 23 property but title to the property vests in the buyer at a later time  
 24 on—

25 (i) paying any part of the purchase price;

26 (ii) performing another condition; or

27 (iii) the happening of a contingency; or

28 (B) to bail or lease an aircraft, aircraft engine, propeller, appli-  
 29 ance, or spare part, under which the bailee or lessee—

30 (i) agrees to pay an amount substantially equal to the value  
 31 of the property; and

32 (ii) is to become, or has the option of becoming, the owner  
 33 of the property on complying with the contract.

34 (19) “conveyance” means an instrument, including a conditional  
 35 sales contract, affecting title to, or an interest in, property.

36 (20) “Federal airway” means a part of the navigable airspace that  
 37 the Administrator designates as a Federal airway.

38 (21) “foreign air carrier” means a person, not a citizen of the Unit-  
 39 ed States, undertaking by any means, directly or indirectly, to provide  
 40 foreign air transportation.

(22) “foreign air commerce” means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

(23) “foreign air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

(24) “interstate air commerce” means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation or operation is by aircraft.

(25) “interstate air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft.



(26) “intrastate air carrier” means a citizen of the United States undertaking by any means to provide only intrastate air transportation.

(27) “intrastate air transportation” means the transportation by a common carrier of passengers or property for compensation, entirely in the same State, by turbojet-powered aircraft capable of carrying at least 30 passengers.

(28) “landing area” means a place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo.

(29) “mail” means United States mail and foreign transit mail.

(30) “navigable airspace” means airspace above the minimum altitudes of flight prescribed by regulations under subparts I and III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.

(31) “navigate aircraft” and “navigation of aircraft” include piloting aircraft.

(32) “operate aircraft” and “operation of aircraft” mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.

(33) “person”, in addition to its meaning under section 1 of title 1, includes a governmental authority and a trustee, receiver, assignee, and other similar representative.

(34) “predatory” means a practice that violates the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

(35) “propeller” includes a part, appurtenance, and accessory of a propeller.

(36) “public aircraft”—

(A) means an aircraft—

(i) used only for the United States Government; or

(ii) owned and operated (except for commercial purposes), or exclusively leased for at least 90 continuous days, by a government (except the United States Government), including a State, the District of Columbia, or a territory or possession of the United States, or political subdivision of that government; but

(B) does not include a government-owned aircraft transporting passengers or property for commercial purposes.

(37) “rate” means a rate, fare, or charge for air transportation.

(38) “spare part” means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.

(39) “State authority” means an authority of a State designated under State law—

(A) to receive notice required to be given a State authority under subpart II of this part; or

(B) as the representative of the State before the Secretary of Transportation in any matter about which the Secretary is required to consult with or consider the views of a State authority under subpart II of this part.

(40) “territory or possession of the United States” means—

(A) the Canal Zone, but this definition does not affect the jurisdiction of the President over air navigation in the Canal Zone; and

(B) any other territory or possession of the United States.

(41) “ticket agent” means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

(42) “United States” means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(b) LIMITED DEFINITION.—In subpart II of this part, “control” means control by any means.

#### **§40103. Sovereignty and use of airspace**

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSIT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) USE OF AIRSPACE.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary

1 to ensure the safety of aircraft and the efficient use of airspace. The Admin-  
 2 istrator may modify or revoke an assignment when required in the public  
 3 interest.

4 (2) The Administrator shall prescribe air traffic regulations on the flight  
 5 of aircraft (including regulations on safe altitudes) for—

6 (A) navigating, protecting, and identifying aircraft;

7 (B) protecting individuals and property on the ground;

8 (C) using the navigable airspace efficiently; and

9 (D) preventing collision between aircraft, between aircraft and land  
 10 or water vehicles, and between aircraft and airborne objects.

11 (3) To establish security provisions that will encourage and allow maxi-  
 12 mum use of the navigable airspace by civil aircraft consistent with national  
 13 security, the Administrator, in consultation with the Secretary of Defense,  
 14 shall—

15 (A) establish areas in the airspace the Administrator decides are nec-  
 16 essary in the interest of national defense; and

17 (B) by regulation or order, restrict or prohibit flight of civil aircraft  
 18 that the Administrator cannot identify, locate, and control with avail-  
 19 able facilities in those areas.

20 (4) Notwithstanding the military exception in section 553(a)(1) of title  
 21 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed  
 22 under this subsection.

23 (c) FOREIGN AIRCRAFT.—A foreign aircraft, not part of the armed forces  
 24 of a foreign country, may be navigated in the United States as provided in  
 25 section 41703 of this title.

26 (d) AIRCRAFT OF ARMED FORCES OF FOREIGN COUNTRIES.—Aircraft of  
 27 the armed forces of a foreign country may be navigated in the United  
 28 States, including the Canal Zone, only when authorized by the Secretary of  
 29 State.

30 (e) NO EXCLUSIVE RIGHTS AT CERTAIN FACILITIES.—A person does not  
 31 have an exclusive right to use an air navigation facility on which Govern-  
 32 ment money has been expended. However, providing services at an airport  
 33 by only one fixed-based operator is not an exclusive right if—

34 (1) it is unreasonably costly, burdensome, or impractical for more  
 35 than one fixed-based operator to provide the services; and

36 (2) allowing more than one fixed-based operator to provide the serv-  
 37 ices requires a reduction in space leased under an agreement existing  
 38 on September 3, 1982, between the operator and the airport.

### 39 **§40104. Promotion of civil aeronautics and air commerce**

40 The Administrator of the Federal Aviation Administration shall encour-  
 41 age the development of civil aeronautics and air commerce in and outside

the United States. In carrying out this section, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

**§ 40105. International negotiations, agreements, and obligations**

(a) ADVICE AND CONSULTATION.—The Secretary of State shall advise the Administrator of the Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) ACTIONS OF SECRETARY AND ADMINISTRATOR.—(1) In carrying out this part, the Secretary of Transportation and the Administrator—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

(c) CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.—In carrying out section 40101(e) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

(1) the Secretaries of Commerce and Defense;

(2) airport operators;

(3) scheduled air carriers;

(4) charter air carriers;

(5) airline labor;

(6) consumer interest groups;

(7) travel agents and tour organizers; and

(8) other groups, institutions, and governmental authorities affected by international aviation policy.

(d) CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIATIONS.—The President shall grant to at least one representative of each House of Congress the privilege of attending international aviation negotiations as an observer if the privilege is requested in advance in writing.

**§40106. Emergency powers**

(a) DEVIATIONS FROM REGULATIONS.—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under section 40103(b)(1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the Administrator of the Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the Administrator and arrange for the deviation in advance on a mutually agreeable basis.

(b) SUSPENSION OF AUTHORITY.—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Not-

withstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.

#### **§ 40107. Presidential transfers**

(a) GENERAL AUTHORITY.—The President may transfer to the Administrator of the Federal Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the Administrator.

(b) DURING WAR.—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.

#### **§ 40108. Training schools**

(a) AUTHORITY TO OPERATE.—The Administrator of the Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the Administrator.

(b) ATTENDANCE.—The Administrator may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals increases the cost of operating the schools, the Administrator may require the payment or transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

**§ 40109. Authority to exempt**

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections 40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935–44937 of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, sections 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b)(1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) MAXIMUM FLYING HOURS.—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) SMALLER AIRCRAFT.—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;



(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.

(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.

(h) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

#### **§ 40110. General procurement authority**

(a) GENERAL.—In carrying out this part, the Administrator of the Federal Aviation Administration may—

(1) acquire, to the extent that amounts are available for obligation, services or an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) dispose of an interest in property for adequate compensation; and

(3) construct and improve laboratories and other test facilities.

(b) DUTIES AND POWERS.—When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration—

(1) is the senior procurement executive referred to in section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) for approving the justification for using procedures other than competitive procedures, as required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)); and

(2) may—

1 (A) lease an interest in property for not more than 20 years;

2 (B) consider the reasonable probable future use of the underly-  
3 ing land in making an award for a condemnation of an interest  
4 in airspace;

5 (C) construct, or acquire an interest in, a public building (as  
6 defined in section 13 of the Public Buildings Act of 1959 (40  
7 U.S.C. 612)) only under a delegation of authority from the Ad-  
8 ministrator of General Services;

9 (D) use procedures other than competitive procedures, as pro-  
10 vided under section 303(c) of the Federal Property and Adminis-  
11 trative Services Act of 1949 (41 U.S.C. 253(c));

12 (E) use procedures other than competitive procedures only when  
13 the property or services needed by the Administrator of the Fed-  
14 eral Aviation Administration are available from only one respon-  
15 sible source or only from a limited number of responsible sources  
16 and no other type of property or services will satisfy the needs of  
17 the Administrator; and

18 (F) dispose of property under subsection (a)(2) of this section,  
19 except for airport and airway property and technical equipment  
20 used for the special purposes of the Administration, only under  
21 title II of the Federal Property and Administrative Services Act  
22 of 1949 (40 U.S.C. 481 et seq.).

23 **§40111. Multiyear procurement contracts for services and**  
24 **related items**

25 (a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of  
26 title 31, the Administrator of the Federal Aviation Administration may  
27 make a contract of not more than 5 years for the following types of services  
28 and items of supply related to those services for which amounts otherwise  
29 would be available for obligation only in the fiscal year for which appro-  
30 priated:

31 (1) Operation, maintenance, and support of facilities and installa-  
32 tions.

33 (2) Operation, maintenance, and modification of aircraft, vehicles,  
34 and other highly complex equipment.

35 (3) Specialized training requiring high quality instructor skills, in-  
36 cluding training of pilots and aircrew members and foreign language  
37 training.

38 (4) Base services, including ground maintenance, aircraft refueling,  
39 bus transportation, and refuse collection and disposal.

40 (b) REQUIRED FINDINGS.—The Administrator may make a contract  
41 under this section only if the Administrator finds that—

(1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;

(2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and

(3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(c) CONSIDERATIONS.—When making a contract under this section, the Administrator shall be guided by the following:

(1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the anticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

(2) The Administrator shall consider the desirability of—

(A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and

(B) reserving in the Administrator the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

(d) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of service concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

#### **§ 40112. Multiyear procurement contracts for property**

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, the Administrator of the Federal Aviation Administration may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section if the Administrator finds that—

(1) the contract will promote the safety or efficiency of the national airspace system and will result in reduced total contract costs;

(2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;

(3) there is a reasonable expectation that throughout the proposed contract period the Administrator will request appropriations for the contract at the level required to avoid cancellation;

(4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and

(5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

(c) REGULATIONS.—The Administrator shall prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and non-recurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable—

(1) to broaden the aviation industrial base—

(A) a contract under this section shall be used to seek, retain, and promote the use under that contract of subcontractors, vendors, or suppliers; and

(B) on accrual of a payment or other benefit accruing on a contract under this section to a subcontractor, vendor, or supplier participating in the contract, the payment or benefit shall be delivered in the most expeditious way practicable; and

(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Administrator to provide for—

(A) competition in producing items to be delivered under a contract under this section; or

(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

(d) CONTRACT PROVISIONS.—(1) A contract under this section may—

(A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;

(B) provide that performance under the contract after the first year is subject to amounts being appropriated; and

(C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

(e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.—(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

(2) Before awarding a contract under this section containing a cancellation ceiling of more than \$100,000,000, the Administrator shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

(f) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

#### **§ 40113. Administrative**

(a) GENERAL AUTHORITY.—The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may take action the Secretary or Administrator, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) HAZARDOUS MATERIAL.—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section 5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

1 (c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator  
 2 of the Federal Aviation Administration with respect to aviation safety duties  
 3 and powers designated to be carried out by the Administrator) may use the  
 4 assistance of the Administrator of the National Aeronautics and Space Ad-  
 5 ministration and any research or technical department, agency, or instru-  
 6 mentality of the United States Government on matters related to aircraft  
 7 fuel and oil, and to the design, material, workmanship, construction, per-  
 8 formance, maintenance, and operation of aircraft, aircraft engines, propel-  
 9 lers, appliances, and air navigation facilities. Each department, agency, and  
 10 instrumentality may conduct scientific and technical research, investigations,  
 11 and tests necessary to assist the Secretary or Administrator of the Federal  
 12 Aviation Administration in carrying out this part. This part does not au-  
 13 thorize duplicating laboratory research activities of a department, agency,  
 14 or instrumentality.

15 (d) INDEMNIFICATION.—The Administrator of the Federal Aviation Ad-  
 16 ministration may indemnify an officer or employee of the Administration  
 17 against a claim or judgment arising out of an act that the Administrator  
 18 decides was committed within the scope of the official duties of the officer  
 19 or employee.

20 **§40114. Reports and records**

21 (a) WRITTEN REPORTS.—(1) Except as provided in this part, the Sec-  
 22 retary of Transportation (or the Administrator of the Federal Aviation Ad-  
 23 ministration with respect to aviation safety duties and powers designated to  
 24 be carried out by the Administrator) shall make a written report of each  
 25 proceeding and investigation under this part in which a formal hearing was  
 26 held and shall provide a copy to each party to the proceeding or investiga-  
 27 tion. The report shall include the decision, conclusions, order, and require-  
 28 ments of the Secretary or Administrator as appropriate.

29 (2) The Secretary (or the Administrator with respect to aviation safety  
 30 duties and powers designated to be carried out by the Administrator) shall  
 31 have all reports, orders, decisions, and regulations the Secretary or Adminis-  
 32 trator, as appropriate, issues or prescribes published in the form and way  
 33 best adapted for public use. A publication of the Secretary or Administrator  
 34 is competent evidence of its contents.

35 (b) PUBLIC RECORDS.—Except as provided in subpart II of this part,  
 36 copies of tariffs and arrangements filed with the Secretary under subpart  
 37 II, and the statistics, tables, and figures contained in reports made to the  
 38 Secretary under subpart II, are public records. The Secretary is the custo-  
 39 dian of those records. A public record, or a copy or extract of it, certified  
 40 by the Secretary under the seal of the Department of Transportation is

competent evidence in an investigation by the Secretary and in a judicial proceeding.

**§40115. Withholding information**

(a) OBJECTIONS TO DISCLOSURE.—(1) A person may object to the public disclosure of information—

(A) in a record filed under this part; or

(B) obtained under this part by the Secretary of Transportation or State or the United States Postal Service.

(2) An objection must be in writing and must state the reasons for the objection. The Secretary of Transportation or State or the Postal Service shall order the information withheld from public disclosure when the appropriate Secretary or the Postal Service decides that disclosure of the information would—

(A) prejudice the United States Government in preparing and presenting its position in international negotiations; or

(B) have an adverse effect on the competitive position of an air carrier in foreign air transportation.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

**§40116. State taxation**

(a) DEFINITION.—In this section, “State” includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) PROHIBITIONS.—Except as provided in subsection (c) of this section and section 40117 of this title, a State or political subdivision of a State may not levy or collect a tax, fee, head charge, or other charge on—

(1) an individual traveling in air commerce;

(2) the transportation of an individual traveling in air commerce;

(3) the sale of air transportation; or

(4) the gross receipts from that air commerce or transportation.

(c) AIRCRAFT TAKING OFF OR LANDING IN STATE.—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—(1) In this subsection—

(A) “air carrier transportation property” means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses;

1 (B) “assessment” means valuation for a property tax levied by a tax-  
 2 ing district;

3 (C) “assessment jurisdiction” means a geographical area in a State  
 4 used in determining the assessed value of property for ad valorem tax-  
 5 ation; and

6 (D) “commercial and industrial property” means property (except  
 7 transportation property and land used primarily for agriculture or tim-  
 8 ber growing) devoted to a commercial or industrial use and subject to  
 9 a property tax levy.

10 (2)(A) A State, political subdivision of a State, or authority acting for  
 11 a State or political subdivision may not do any of the following acts because  
 12 those acts unreasonably burden and discriminate against interstate com-  
 13 merce:

14 (i) Assess air carrier transportation property at a value that has a  
 15 higher ratio to the true market value of the property than the ratio  
 16 that the assessed value of other commercial and industrial property of  
 17 the same type in the same assessment jurisdiction has to the true mar-  
 18 ket value of the other commercial and industrial property.

19 (ii) Levy or collect a tax on an assessment that may not be made  
 20 under clause (i) of this subparagraph.

21 (iii) Levy or collect an ad valorem property tax on air carrier trans-  
 22 portation property at a tax rate greater than the tax rate applicable  
 23 to commercial and industrial property in the same assessment jurisdic-  
 24 tion.

25 (B) Subparagraph (A) of this paragraph does not apply to an in lieu tax  
 26 completely used for airport and aeronautical purposes.

27 (e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in  
 28 subsection (d) of this section, a State or political subdivision of a State may  
 29 levy or collect—

30 (1) taxes (except those taxes enumerated in subsection (b) of this  
 31 section), including property taxes, net income taxes, franchise taxes,  
 32 and sales or use taxes on the sale of goods or services; and

33 (2) reasonable rental charges, landing fees, and other service charges  
 34 from aircraft operators for using airport facilities of an airport owned  
 35 or operated by that State or subdivision.

36 (f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

37 (A) “pay” means money received by an employee for services.

38 (B) “State” means a State of the United States, the District of Co-  
 39 lumbia, and a territory or possession of the United States.

40 (C) an employee is deemed to have earned 50 percent of the employ-  
 41 ee’s pay in a State or political subdivision of a State in which the



1 scheduled flight time of the employee in the State or subdivision is  
 2 more than 50 percent of the total scheduled flight time of the employee  
 3 when employed during the calendar year.

4 (2) The pay of an employee of an air carrier having regularly assigned  
 5 duties on aircraft in at least 2 States is subject to the income tax laws of  
 6 only the following:

7 (A) the State or political subdivision of the State that is the resi-  
 8 dence of the employee.

9 (B) the State or political subdivision of the State in which the em-  
 10 ployee earns more than 50 percent of the pay received by the employee  
 11 from the carrier.

12 **§ 40117. Passenger facility fees**

13 (a) DEFINITIONS.—In this section—

14 (1) “airport”, “commercial service airport”, and “public agency”  
 15 have the same meanings given those terms in section 47102 of this  
 16 title.

17 (2) “eligible agency” means a public agency that controls a commer-  
 18 cial service airport.

19 (3) “eligible airport-related project” means a project—

20 (A) for airport development or airport planning under sub-  
 21 chapter I of chapter 471 of this title;

22 (B) for terminal development described in section 47110(d) of  
 23 this title;

24 (C) for airport noise capability planning under section 47505 of  
 25 this title;

26 (D) to carry out noise compatibility measures eligible for assist-  
 27 ance under section 47504 of this title, whether or not a program  
 28 for those measures has been approved under section 47504; and

29 (E) for constructing gates and related areas at which pas-  
 30 sengers board or exit aircraft.

31 (4) “passenger facility fee” means a fee imposed under this section.

32 (5) “passenger facility revenue” means revenue derived from a pas-  
 33 senger facility fee.

34 (b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may au-  
 35 thorize under this section an eligible agency to impose a passenger facility  
 36 fee of \$1, \$2, or \$3 on each paying passenger of an air carrier or foreign  
 37 air carrier boarding an aircraft at an airport the agency controls to finance  
 38 an eligible airport-related project, including making payments for debt serv-  
 39 ice on indebtedness incurred to carry out the project, to be carried out in  
 40 connection with the airport or any other airport the agency controls.

1 (2) A State, political subdivision of a State, or authority of a State or  
2 political subdivision that is not the eligible agency may not regulate or pro-  
3 hibit the imposition or collection of a passenger facility fee or the use of  
4 the passenger facility revenue.

5 (3) A passenger facility fee may be imposed on a passenger of an air car-  
6 rier or foreign air carrier originating or connecting at the commercial serv-  
7 ice airport that the agency controls.

8 (c) APPLICATIONS.—(1) An eligible agency must submit to the Secretary  
9 an application for authority to impose a passenger facility fee. The applica-  
10 tion shall contain information and be in the form that the Secretary may  
11 require by regulation.

12 (2) Before submitting an application, the eligible agency must provide  
13 reasonable notice to, and an opportunity for consultation with, air carriers  
14 and foreign air carriers operating at the airport. The Secretary shall pre-  
15 scribe regulations that define reasonable notice and contain at least the fol-  
16 lowing requirements:

17 (A) The agency must provide written notice of individual projects  
18 being considered for financing by a passenger facility fee and the date  
19 and location of a meeting to present the projects to air carriers and  
20 foreign air carriers operating at the airport.

21 (B) Not later than 30 days after written notice is provided under  
22 subparagraph (A) of this paragraph, each air carrier and foreign air  
23 carrier operating at the airport must provide to the agency written no-  
24 tice of receipt of the notice. Failure of a carrier to provide the notice  
25 may be deemed certification of agreement with the project by the car-  
26 rier under subparagraph (D) of this paragraph.

27 (C) Not later than 45 days after written notice is provided under  
28 subparagraph (A) of this paragraph, the agency must conduct a meet-  
29 ing to provide air carriers and foreign air carriers with descriptions of  
30 projects and justifications and a detailed financial plan for projects.

31 (D) Not later than 30 days after the meeting, each air carrier and  
32 foreign air carrier must provide to the agency certification of agree-  
33 ment or disagreement with projects (or total plan for the projects).  
34 Failure to provide the certification is deemed certification of agreement  
35 with the project by the carrier. A certification of disagreement is void  
36 if it does not contain the reasons for the disagreement.

37 (3) After receiving an application, the Secretary shall provide notice and  
38 an opportunity to air carriers, foreign air carriers, and other interested per-  
39 sons to comment on the application. The Secretary shall make a final deci-  
40 sion on the application not later than 120 days after receiving it.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project; and

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers.

(e) LIMITATIONS ON IMPOSING FEES.—(1) An eligible agency may impose a passenger facility fee only—

(A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility fee may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II; and

(C) for a project the Secretary does not approve under this section before October 1, 1993, if, during the fiscal year ending September 30, 1993, the amount available for obligation under subchapter II of chapter 417 of this title is less than \$38,600,000, except that this clause—

(i) does not apply if the amount available for obligation under subchapter II of chapter 417 of this title is less than \$38,600,000 because of sequestration or other general appropriations reductions applied proportionately to appropriations accounts throughout an appropriation law; and

(ii) does not affect the authority of the Secretary to approve the imposition of a fee or the use of revenues, derived from a fee imposed under an approval made under this section, by a public agency that has received an approval to impose a fee under this

1 section before September 30, 1993, regardless of whether the fee  
2 is being imposed on September 30, 1993.

3 (f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—(1)

4 A contract between an air carrier or foreign air carrier and an eligible agen-  
5 cy made at any time may not impair the authority of the agency to impose  
6 a passenger facility fee or to use the passenger facility revenue as provided  
7 in this section.

8 (2) A project financed with a passenger facility fee may not be subject  
9 to an exclusive long-term lease or use agreement of an air carrier or foreign  
10 air carrier, as defined by regulations of the Secretary.

11 (3) A lease or use agreement of an air carrier or foreign air carrier relat-  
12 ed to a project whose construction or expansion was financed with a pas-  
13 senger facility fee may not restrict the eligible agency from financing, devel-  
14 oping, or assigning new capacity at the airport with passenger facility  
15 revenue.

16 (g) TREATMENT OF REVENUE.—(1) Passenger facility revenue is not air-  
17 port revenue for purposes of establishing a rate, fee, or charge under a con-  
18 tract between an eligible agency and an air carrier or foreign air carrier.

19 (2) An eligible agency may not include in its rate base the part of the  
20 capital costs of a project paid for by using passenger facility revenue to es-  
21 tablish a rate, fee, or charge under a contract between the agency and an  
22 air carrier or foreign air carrier.

23 (3) For a project for terminal development, gates and related areas, or  
24 a facility occupied or used by at least one air carrier or foreign air carrier  
25 on an exclusive or preferential basis, a rate, fee, or charge payable by an  
26 air carrier or foreign air carrier using the facilities must at least equal the  
27 rate, fee, or charge paid by an air carrier or foreign air carrier using a simi-  
28 lar facility at the airport that was not financed with passenger facility  
29 revenue.

30 (h) COMPLIANCE.—(1) As necessary to ensure compliance with this sec-  
31 tion, the Secretary shall prescribe regulations requiring recordkeeping and  
32 auditing of accounts maintained by an air carrier or foreign air carrier and  
33 its agent collecting a passenger facility fee and by the eligible agency impos-  
34 ing the fee.

35 (2) The Secretary periodically shall audit and review the use by an eligi-  
36 ble agency of passenger facility revenue. After review and a public hearing,  
37 the Secretary may end any part of the authority of the agency to impose  
38 a passenger facility fee to the extent the Secretary decides that the revenue  
39 is not being used as provided in this section.

40 (3) The Secretary may set off amounts necessary to ensure compliance  
41 with this section against amounts otherwise payable to an eligible agency

under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect; and

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation.

#### **§ 40118. Government-financed air transportation**

(a) TRANSPORTATION BY AIR CARRIERS HOLDING CERTIFICATES.—A department, agency, or instrumentality of the United States Government shall take necessary steps to ensure that the transportation of passengers and property by air is provided by an air carrier holding a certificate under section 41102 of this title if—

(1) the department, agency, or instrumentality—

(A) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government; or

(B) provides the transportation to or for a foreign country or international or other organization without reimbursement;

(2) the transportation is authorized by the certificate or by regulation or exemption of the Secretary of Transportation; and

(3) the air carrier is—

(A) available, if the transportation is between a place in the United States and a place outside the United States; or

(B) reasonably available, if the transportation is between 2 places outside the United States.

(b) TRANSPORTATION BY FOREIGN AIR CARRIERS.—This section does not preclude the transportation of passengers and property by a foreign air carrier if the transportation is provided under a bilateral or multilateral air transportation agreement to which the Government and the government of a foreign country are parties if the agreement—

(1) is consistent with the goals for international aviation policy of section 40101(e) of this title; and

(2) provides for the exchange of rights or benefits of similar magnitude.

(c) PROOF.—The Comptroller General shall allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.

(d) TRANSPORTATION BY FOREIGN AIR CARRIERS.—Notwithstanding subsections (a) and (c) of this section, any amount appropriated to the Secretary of State, the Director of the United States Information Agency, the Director of the United States International Development Cooperation Agency, or the Director of the Arms Control and Disarmament Agency may be used to pay for the transportation of an officer or employee of the Department of State or one of those agencies, a dependent of the officer or employee, and accompanying baggage, by a foreign air carrier when the transportation is between 2 places outside the United States.

(e) RELATIONSHIP TO OTHER LAWS.—This section does not affect the application of the antidiscrimination provisions of this part.

#### **§ 40119. Security and research and development activities**

(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence and aircraft piracy.

(b) DISCLOSURE.—(1) Notwithstanding section 552 of title 5, the Administrator shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities under section 44501(a) or (c), 44502(a)(1) or (3), (b), or (c), 44504, 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903(a), (b), (c), or (e), 44905, 44912, 44935, 44936, or 44938(a) or (b) of this title if the Administrator decides disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the safety of passengers in air transportation.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Administrator may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

#### **§ 40120. Relationship to other laws**

(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.), the navigation and shipping laws of the United States and the rules for the prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

(b) EXTENDING APPLICATION OUTSIDE UNITED STATES.—The President may extend (in the way and for periods the President considers necessary) the application of this part to outside the United States when—

(1) an international arrangement gives the United States Government authority to make the extension; and

(2) the President decides the extension is in the national interest.

(c) ADDITIONAL REMEDIES.—A remedy under this part is in addition to any other remedies provided by law.

### **SUBPART II—ECONOMIC REGULATION**

## **CHAPTER 411—AIR CARRIER CERTIFICATES**

Sec.

41101. Requirement for a certificate.

41102. General, temporary, and charter air transportation certificates of air carriers.

41103. All-cargo air transportation certificates of air carriers.

41104. Additional limitations and requirements of charter air carriers.

41105. Transfers of certificates.

41106. Airlift service.

41107. Transportation of mail.

41108. Applications for certificates.

41109. Terms of certificates.

41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates.

41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates.

41112. Liability insurance and financial responsibility.

#### **§ 41101. Requirement for a certificate**

(a) GENERAL.—Except as provided in this chapter or another law—

(1) an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter authorizing the air transportation;

(2) a charter air carrier may provide charter air transportation only if the charter air carrier holds a certificate issued under this chapter authorizing the charter air transportation; and

1 (3) an air carrier may provide all-cargo air transportation only if the  
 2 air carrier holds a certificate issued under this chapter authorizing the  
 3 all-cargo air transportation.

4 (b) THROUGH SERVICE AND JOINT TRANSPORTATION.—A citizen of the  
 5 United States providing transportation in a State of passengers or property  
 6 as a common carrier for compensation with aircraft capable of carrying at  
 7 least 30 passengers, under authority granted by the appropriate State au-  
 8 thority—

9 (1) may provide transportation for passengers and property that in-  
 10 cludes through service by the citizen over its routes in the State and  
 11 in air transportation by an air carrier or foreign air carrier; and

12 (2) subject to sections 41309 and 42111 of this title, may make an  
 13 agreement with an air carrier or foreign air carrier to provide the joint  
 14 transportation.

15 (c) PROPRIETARY OR EXCLUSIVE RIGHT NOT CONFERRED.—A certificate  
 16 issued under this chapter does not confer a proprietary or exclusive right  
 17 to use airspace, an airway of the United States, or an air navigation facility.

18 **§41102. General, temporary, and charter air transportation**  
 19 **certificates of air carriers**

20 (a) ISSUANCE.—The Secretary of Transportation may issue a certificate  
 21 of public convenience and necessity to a citizen of the United States author-  
 22 izing the citizen to provide any part of the following air transportation the  
 23 citizen has applied for under section 41108 of this title:

24 (1) Air transportation as an air carrier.

25 (2) Temporary air transportation as an air carrier for a limited pe-  
 26 riod.

27 (3) Charter air transportation as a charter air carrier.

28 (b) FINDINGS REQUIRED FOR ISSUANCE.—(1) Before issuing a certificate  
 29 under subsection (a) of this section, the Secretary must find that the citizen  
 30 is fit, willing, and able to provide the transportation to be authorized by  
 31 the certificate and to comply with this part and regulations of the Secretary.

32 (2) In addition to the findings under paragraph (1) of this subsection,  
 33 the Secretary, before issuing a certificate under subsection (a) of this sec-  
 34 tion for foreign air transportation, must find that the transportation is con-  
 35 sistent with the public convenience and necessity.

36 (c) TEMPORARY CERTIFICATES.—The Secretary may issue a certificate  
 37 under subsection (a) of this section for interstate air transportation (except  
 38 the transportation of passengers) or foreign air transportation for a tem-  
 39 porary period of time (whether the application is for permanent or tem-  
 40 porary authority) when the Secretary decides that a test period is desir-  
 41 able—



(1) to decide if the projected services, efficiencies, methods, and rates and the projected results will materialize and remain for a sustained period of time; or

(2) to evaluate the new transportation.

(d) FOREIGN AIR TRANSPORTATION.—The Secretary shall submit each decision authorizing the provision of foreign air transportation to the President under section 41307 of this title.

**§41103. All-cargo air transportation certificates of air carriers**

(a) APPLICATIONS.—A citizen of the United States may apply to the Secretary of Transportation for a certificate authorizing the citizen to provide all-property air transportation. The application must contain information and be in the form the Secretary by regulation requires.

(b) ISSUANCE.—Not later than 180 days after an application for a certificate is filed under this section, the Secretary shall issue the certificate to a citizen of the United States authorizing the citizen, as an air carrier, to provide any part of the all-cargo air transportation applied for unless the Secretary finds that the citizen is not fit, willing, and able to provide the all-cargo air transportation to be authorized by the certificate and to comply with regulations of the Secretary.

(c) TERMS.—The Secretary may impose terms the Secretary considers necessary when issuing a certificate under this section. However, the Secretary may not impose terms that restrict the places served or rates charged by the holder of the certificate.

(d) EXEMPTIONS AND STATUS.—A citizen issued a certificate under this section—

(1) is exempt in providing the transportation under the certificate from the requirements of—

(A) section 41101(a)(1) of this title and regulations or procedures prescribed under section 41101(a)(1); and

(B) other provisions of this part and regulations or procedures prescribed under those provisions when the Secretary finds under regulations of the Secretary that the exemption is appropriate; and

(2) is an air carrier under this part except to the extent the carrier is exempt under this section from a requirement of this part.

**§41104. Additional limitations and requirements of charter air carriers**

(a) RESTRICTIONS.—The Secretary of Transportation may prescribe a regulation or issue an order restricting the marketability, flexibility, accessibility, or variety of charter air transportation provided under a certificate issued under section 41102 of this title only to the extent required by the

public interest. A regulation prescribed or order issued under this subsection may not be more restrictive than a regulation related to charter air transportation that was in effect on October 1, 1978.

(b) ALASKA.—An air carrier holding a certificate issued under section 41102 of this title may provide charter air transportation between places in Alaska only to the extent the Secretary decides the transportation is required by public convenience and necessity. The Secretary may make that decision when issuing, amending, or modifying the certificate. This subsection does not apply to a certificate issued under section 41102 to a citizen of the United States who, before July 1, 1977—

(1) maintained a principal place of business in Alaska; and

(2) conducted air transport operations between places in Alaska with aircraft with a certificate for gross takeoff weight of more than 40,000 pounds.

(c) SUSPENSIONS.—(1) The Secretary shall suspend for not more than 30 days any part of the certificate of a charter air carrier if the Secretary decides that the failure of the carrier to comply with the requirements described in sections 41110(e) and 41112 of this title, or a regulation or order of the Secretary under section 41110(e) or 41112, requires immediate suspension in the interest of the rights, welfare, or safety of the public. The Secretary may act under this paragraph without notice or a hearing.

(2) The Secretary shall begin immediately a hearing to decide if the certificate referred to in paragraph (1) of this subsection should be amended, modified, suspended, or revoked. Until the hearing is completed, the Secretary may suspend the certificate for additional periods totaling not more than 60 days. If the Secretary decides that the carrier is complying with the requirements described in sections 41110(e) and 41112 of this title and regulations and orders under sections 41110(e) and 41112, the Secretary immediately may end the suspension period and proceeding begun under this subsection. However, the Secretary is not prevented from imposing a civil penalty on the carrier for violating the requirements described in section 41110(e) or 41112 or a regulation or order under section 41110(e) or 41112.

#### **§ 41105. Transfers of certificates**

(a) GENERAL.—A certificate issued under section 41102 of this title may be transferred only when the Secretary of Transportation approves the transfer as being consistent with the public interest.

(b) CERTIFICATION TO CONGRESS.—When a certificate is transferred, the Secretary shall certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with

the public interest. The Secretary shall include with the certification a report analyzing the effects of the transfer on—

(1) the viability of each carrier involved in the transfer;

(2) competition in the domestic airline industry; and

(3) the trade position of the United States in the international air transportation market.

#### **§ 41106. Airlift service**

(a) GENERAL.—(1) Except as provided in subsection (b) of this section, the transportation of passengers or property by transport category aircraft in interstate air transportation obtained by the Secretary of Defense or the Secretary of a military department through a contract of at least 31 days for airlift service in the United States may be provided only by an air carrier that—

(A) has aircraft in the civil reserve air fleet or offers to place the aircraft in that fleet; and

(B) holds a certificate issued under section 41102 of this title.

(2) The Secretary of Transportation shall act as expeditiously as possible on an application for a certificate under section 41102 of this title to provide airlift service.

(b) EXCEPTION.—When the Secretary of Defense decides that no air carrier holding a certificate under section 41102 is capable of providing, and willing to provide, the airlift service, the Secretary of Defense may make a contract to provide the service with an air carrier not having a certificate.

#### **§ 41107. Transportation of mail**

When the United States Postal Service finds that the needs of the Postal Service require the transportation of mail by aircraft in foreign air transportation or between places in Alaska, in addition to the transportation of mail authorized under certificates in effect, the Postal Service shall certify that finding to the Secretary of Transportation with a statement about the additional transportation and facilities necessary to provide the additional transportation. A copy of each certification and statement shall be posted for at least 20 days in the office of the Secretary. After notice and an opportunity for a hearing, the Secretary shall issue a new certificate under section 41102 of this title, or amend or modify an existing certificate under section 41110(a)(2)(A) of this title, to provide the additional transportation and facilities if the Secretary finds the additional transportation is required by the public convenience and necessity.

#### **§ 41108. Applications for certificates**

(a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certificate of public convenience and necessity under section 41102 of this title,

1 a citizen of the United States must apply to the Secretary of Transpor-  
 2 tation. The application must—

3 (1) be in the form and contain information required by regulations  
 4 of the Secretary; and

5 (2) be accompanied by proof of service on interested persons as re-  
 6 quired by regulations of the Secretary and on each community that  
 7 may be affected by the issuance of the certificate.

8 (b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an  
 9 application is filed, the Secretary shall post a notice of the application in  
 10 the office of the Secretary and give notice of the application to other per-  
 11 sons as required by regulations of the Secretary. An interested person may  
 12 file a response with the Secretary opposing or supporting the issuance of  
 13 the certificate. Not later than 90 days after the application is filed, the Sec-  
 14 retary shall—

15 (A) provide an opportunity for a public hearing on the application;

16 (B) begin the procedure under section 41111 of this title; or

17 (C) dismiss the application on its merits.

18 (2) An order of dismissal issued by the Secretary under paragraph (1)(C)  
 19 of this subsection is a final order and may be reviewed judicially under sec-  
 20 tion 46110 of this title.

21 (3) If the Secretary provides an opportunity for a hearing under para-  
 22 graph (1)(A) of this subsection, an initial or recommended decision shall be  
 23 issued not later than 150 days after the date the Secretary provides the op-  
 24 portunity. The Secretary shall issue a final order on the application not  
 25 later than 90 days after the decision is issued. However, if the Secretary  
 26 does not act within the 90-day period, the initial or recommended decision  
 27 on an application to provide—

28 (A) interstate air transportation is a final order and may be reviewed  
 29 judicially under section 46110 of this title; and

30 (B) foreign air transportation shall be submitted to the President  
 31 under section 41307 of this title.

32 (4) If the Secretary acts under paragraph (1)(B) of this subsection, the  
 33 Secretary shall issue a final order on the application not later than 180 days  
 34 after beginning the procedure on the application.

35 (5) If a citizen applying for a certificate does not meet the procedural  
 36 schedule adopted by the Secretary in a proceeding, the Secretary may ex-  
 37 tend the period for acting under paragraphs (3) and (4) of this subsection  
 38 by a period equal to the period of delay caused by the citizen. In addition  
 39 to an extension under this paragraph, an initial or recommended decision  
 40 under paragraph (3) of this subsection may be delayed for not more than  
 41 30 days in extraordinary circumstances.

(c) PROOF REQUIREMENTS.—(1) A citizen applying for a certificate must prove that the citizen is fit, willing, and able to provide the transportation referred to in section 41102 of this title and to comply with this part.

(2) A person opposing a citizen applying for a certificate must prove that the transportation referred to in section 41102(b)(2) of this title is not consistent with the public convenience and necessity. The transportation is deemed to be consistent with the public convenience and necessity unless the Secretary finds, by a preponderance of the evidence, that the transportation is not consistent with the public convenience and necessity.

#### **§ 41109. Terms of certificates**

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title shall specify the type of transportation to be provided.

(2) The Secretary of Transportation—

(A) may prescribe terms for providing air transportation under the certificate that the Secretary finds may be required in the public interest; but

(B) may not prescribe a term preventing an air carrier from adding or changing schedules, equipment, accommodations, and facilities for providing the authorized transportation to satisfy business development and public demand.

(3) A certificate issued under section 41102 of this title to provide foreign air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each general route to be followed. The Secretary shall authorize an air carrier holding a certificate to provide foreign air transportation to handle and transport mail of countries other than the United States.

(4) A certificate issued under section 41102 of this title to provide foreign charter air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each geographical area in which, or between which, the transportation may be provided.

(b) MODIFYING TERMS.—(1) An air carrier may file with the Secretary an application to modify any term of its certificate issued under section 41102 of this title to provide interstate or foreign air transportation. Not later than 60 days after an application is filed, the Secretary shall—

(A) provide the carrier an opportunity for an oral evidentiary hearing on the record; or

(B) begin to consider the application under section 41111 of this title.

(2) The Secretary shall modify each term the Secretary finds to be inconsistent with the criteria under section 40101(a) and (b) of this title.

(3) An application under this subsection may not be dismissed under section 41108(b)(1)(C) of this title.

**§41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates**

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title is effective from the date specified in it and remains in effect until—

(A) the Secretary of Transportation suspends or revokes the certificate under this section;

(B) the end of the period the Secretary specifies for an air carrier having a certificate of temporary authority issued under section 41102(a)(2) of this title; or

(C) the Secretary certifies that transportation is no longer being provided under a certificate.

(2) On application or on the initiative of the Secretary and after notice and an opportunity for a hearing or, except as provided in paragraph (4) of this subsection, under section 41111 of this title, the Secretary may—

(A) amend, modify, or suspend any part of a certificate if the Secretary finds the public convenience and necessity require amendment, modification, or suspension; and

(B) revoke any part of a certificate if the Secretary finds that the holder of the certificate intentionally does not comply with this chapter, sections 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, a regulation or order of the Secretary under any of those provisions, or a term of its certificate.

(3) The Secretary may revoke a certificate under paragraph (2)(B) of this subsection only if the holder of the certificate does not comply, within a reasonable time the Secretary specifies, with an order to the holder requiring compliance.

(4) A certificate to provide foreign air transportation may not be amended, modified, suspended, or revoked under section 41111 of this title if the holder of the certificate requests an oral evidentiary hearing or the Secretary finds, under all the facts and circumstances, that the hearing is required in the public interest.

(b) ALL-CARGO AIR TRANSPORTATION.—The Secretary may order that a certificate issued under section 41103 of this title authorizing all-cargo air transportation is ineffective if, after notice and an opportunity for a hear-

ing, the Secretary finds that the transportation is not provided to the minimum extent specified by the Secretary.

(c) FOREIGN AIR TRANSPORTATION.—(1) Notwithstanding subsection (a)(2)–(4) of this section, after notice and a reasonable opportunity for the affected air carrier to present its views, but without a hearing, the Secretary may suspend or revoke the authority of an air carrier to provide foreign air transportation to a place under a certificate issued under section 41102 of this title if the carrier—

(A) notifies the Secretary, under section 41734(a) of this title or a regulation of the Secretary, that it intends to suspend all transportation to that place; or

(B) does not provide regularly scheduled transportation to the place for 90 days immediately before the date the Secretary notifies the carrier of the action the Secretary proposes.

(2) Paragraph (1)(B) of this subsection does not apply to a place provided seasonal transportation comparable to the transportation provided during the prior year.

(d) TEMPORARY CERTIFICATES.—On application or on the initiative of the Secretary, the Secretary may—

(1) review the performance of an air carrier issued a certificate under section 41102(c) of this title on the basis that the air carrier will provide innovative or low-priced air transportation under the certificate; and

(2) amend, modify, suspend, or revoke the certificate or authority under subsection (a)(2) or (c) of this section if the air carrier has not provided, or is not providing, the transportation.

(e) CONTINUING REQUIREMENTS.—After notice and an opportunity for a hearing, the Secretary shall amend, modify, suspend, or revoke any part of a certificate issued under section 41102 of this title if the Secretary finds that the air carrier—

(1) is not fit, willing, and able to continue to provide the transportation authorized by the certificate and to comply with this part and regulations of the Secretary; or

(2) does not file reports necessary for the Secretary to decide if the carrier is complying with the requirements of clause (1) of this subsection.

(f) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the United States Government, shall reexamine immediately the fitness of an air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the certificate of the carrier issued under this chapter.

(g) RESPONSES.—An interested person may file a response with the Secretary opposing or supporting the amendment, modification, suspension, or revocation of a certificate under subsection (a) of this section.

**§41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates**

(a) GENERAL REQUIREMENTS.—(1) The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(A) acting on an application for a certificate to provide air transportation under section 41102 of this title; and

(B) amending, modifying, suspending, or transferring any part of that certificate under section 41105 or 41110(a) or (c) of this title.

(2) Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.

(b) WHEN SIMPLIFIED PROCEDURE USED.—The Secretary may use the simplified procedure to act on an application for a certificate to provide air transportation under section 41102 of this title, or to amend, modify, suspend, or transfer any part of that certificate under section 41105 or 41110(a) or (c) of this title, when the Secretary decides the use of the procedure is in the public interest.

(c) CONTENTS.—(1) To the extent the Secretary finds practicable, regulations under this section shall include each standard the Secretary will apply when—

(A) deciding whether to use the simplified procedure; and

(B) making a decision on an action in which the procedure is used.

(2) The regulations may provide that written evidence and argument may be filed under section 41108(b) of this title as a part of a response opposing or supporting the issuance of a certificate.

**§41112. Liability insurance and financial responsibility**

(a) LIABILITY INSURANCE.—The Secretary of Transportation may issue a certificate to a citizen of the United States to provide air transportation as an air carrier under section 41102 of this title only if the citizen complies with regulations and orders of the Secretary governing the filing of an in-



1     surance policy or self-insurance plan approved by the Secretary. The policy  
 2     or plan must be sufficient to pay, not more than the amount of the insur-  
 3     ance, for bodily injury to, or death of, an individual or for loss of, or dam-  
 4     age to, property of others, resulting from the operation or maintenance of  
 5     the aircraft under the certificate. A certificate does not remain in effect un-  
 6     less the carrier complies with this subsection.

7     (b) FINANCIAL RESPONSIBILITY.—To protect passengers and shippers  
 8     using an aircraft operated by an air carrier issued a certificate under sec-  
 9     tion 41102 of this title, the Secretary may require the carrier to file a per-  
 10    formance bond or equivalent security in the amount and on terms the Sec-  
 11    retary prescribes. The bond or security must be sufficient to ensure the car-  
 12    rier adequately will pay the passengers and shippers when the transpor-  
 13    tation the carrier agrees to provide is not provided. The Secretary shall pre-  
 14    scribe the amounts to be paid under this subsection.

## 15           **CHAPTER 413—FOREIGN AIR TRANSPORTATION**

Sec.

41301. Requirement for a permit.

41302. Permits of foreign air carriers.

41303. Transfers of permits.

41304. Effective periods and amendments, modifications, suspensions, and revocations of per-  
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41305. Applications for permits.

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41307. Presidential review of actions about foreign air transportation.

41308. Exemption from the antitrust laws.

41309. Cooperative agreements and requests.

41310. Discriminatory practices.

### 16           **§ 41301. Requirement for a permit**

17       A foreign air carrier may provide foreign air transportation only if the  
 18       foreign air carrier holds a permit issued under this chapter authorizing the  
 19       foreign air transportation.

### 20           **§ 41302. Permits of foreign air carriers**

21       The Secretary of Transportation may issue a permit to a person (except  
 22       a citizen of the United States) authorizing the person to provide foreign air  
 23       transportation as a foreign air carrier if the Secretary finds that—

24           (1) the person is fit, willing, and able to provide the foreign air  
 25           transportation to be authorized by the permit and to comply with this  
 26           part and regulations of the Secretary; and

27           (2)(A) the person is qualified, and has been designated by the gov-  
 28           ernment of its country, to provide the foreign air transportation under  
 29           an agreement with the United States Government; or

30           (B) the foreign air transportation to be provided under the permit  
 31           will be in the public interest.

**§ 41303. Transfers of permits**

A permit issued under section 41302 of this title may be transferred only when the Secretary of Transportation approves the transfer because the transfer is in the public interest.

**§ 41304. Effective periods and amendments, modifications, suspensions, and revocations of permits**

(a) GENERAL.—The Secretary of Transportation may prescribe the period during which a permit issued under section 41302 of this title is in effect. After notice and an opportunity for a hearing, the Secretary may amend, modify, suspend, or revoke the permit if the Secretary finds that action to be in the public interest.

(b) SUSPENSIONS AND RESTRICTIONS.—Without a hearing, but subject to the approval of the President, the Secretary—

(1) may suspend summarily the permits of foreign air carriers of a foreign country, or amend, modify, or limit the operations of the foreign air carriers under the permits, when the Secretary finds—

(A) the action is in the public interest; and

(B) the government, an aeronautical authority, or a foreign air carrier of the foreign country, over the objection of the United States Government, has—

(i) limited or denied the operating rights of an air carrier;

or

(ii) engaged in unfair, discriminatory, or restrictive practices that have a substantial adverse competitive impact on an air carrier related to air transportation to, from, through, or over the territory of the foreign country; and

(2) to make this subsection effective, may restrict operations between the United States and the foreign country by a foreign air carrier of a third country.

(c) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the Government, shall reexamine immediately the fitness of a foreign air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the permit of the carrier issued under this chapter.

(d) RESPONSES.—An interested person may file a response with the Secretary opposing or supporting the amendment, modification, suspension, or revocation of a permit under subsection (a) of this section.

**§ 41305. Applications for permits**

(a) FORM, CONTENTS, NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) A person must apply in writing to the Secretary of Transportation to be issued a permit under section 41302 of this title. The Secretary shall prescribe regulations to require that the application be—

(A) verified;

(B) in a certain form and contain certain information;

(C) served on interested persons; and

(D) accompanied by proof of service on those persons.

(2) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the permit. The Secretary shall act on an application as expeditiously as possible.

(b) TERMS.—The Secretary may impose terms for providing foreign air transportation under the permit that the Secretary finds may be required in the public interest.

**§ 41306. Simplified procedure to apply for, amend, modify, and suspend permits**

(a) REGULATIONS.—The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(1) acting on an application for a permit to provide foreign air transportation under section 41302 of this title; and

(2) amending, modifying, or suspending any part of that permit under section 41304(a) or (b) of this title.

(b) NOTICE AND OPPORTUNITY TO RESPOND.—Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.

**§ 41307. Presidential review of actions about foreign air transportation**

The Secretary of Transportation shall submit to the President for review each decision of the Secretary to issue, deny, amend, modify, suspend, revoke, or transfer a certificate issued under section 41102 of this title authorizing an air carrier, or a permit issued under section 41302 of this title authorizing a foreign air carrier, to provide foreign air transportation. The President may disapprove the decision of the Secretary only if the reason

for disapproval is based on foreign relations or national defense considerations that are under the jurisdiction of the President. The President may not disapprove a decision of the Secretary if the reason is economic or related to carrier selection. A decision of the Secretary—

(1) is void if the President disapproves the decision and publishes the reasons (to the extent allowed by national security) for disapproval not later than 60 days after it is submitted to the President; or

(2)(A) takes effect as a decision of the Secretary if the President does not disapprove the decision not later than 60 days after the decision is submitted to the President; and

(B) when effective, may be reviewed judicially under section 46110 of this title.

#### **§ 41308. Exemption from the antitrust laws**

(a) DEFINITION.—In this section, “antitrust laws” has the same meaning given that term in the first section of the Clayton Act (15 U.S.C. 12).

(b) EXEMPTION AUTHORIZED.—When the Secretary of Transportation decides it is required by the public interest, the Secretary, as part of an order under section 41309 or 42111 of this title, may exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

(c) EXEMPTION REQUIRED.—In an order under section 41309 of this title approving an agreement, request, modification, or cancellation, the Secretary, on the basis of the findings required under section 41309(b)(1), shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

#### **§ 41309. Cooperative agreements and requests**

(a) FILING.—An air carrier or foreign air carrier may file with the Secretary of Transportation a true copy of or, if oral, a true and complete memorandum of, an agreement (except an agreement related to interstate air transportation), or a request for authority to discuss cooperative arrangements (except arrangements related to interstate air transportation), and any modification or cancellation of an agreement, between the air carrier or foreign air carrier and another air carrier, a foreign carrier, or another carrier.

(b) APPROVAL.—The Secretary of Transportation shall approve an agreement, request, modification, or cancellation referred to in subsection (a) of this section when the Secretary finds it is not adverse to the public interest

and is not in violation of this part. However, the Secretary shall dis-  
approve—

(1) or, after periodic review, end approval of, an agreement, request,  
modification, or cancellation, that substantially reduces or eliminates  
competition unless the Secretary finds that—

(A) the agreement, request, modification, or cancellation is nec-  
essary to meet a serious transportation need or to achieve impor-  
tant public benefits (including international comity and foreign  
policy considerations); and

(B) the transportation need cannot be met or those benefits  
cannot be achieved by reasonably available alternatives that are  
materially less anticompetitive; or

(2) an agreement that—

(A) is between an air carrier not directly operating aircraft in  
foreign air transportation and a common carrier subject to subtitle  
IV of this title; and

(B) governs the compensation the common carrier may receive  
for the transportation.

(c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.—(1)  
When an agreement, request, modification, or cancellation is filed, the Sec-  
retary of Transportation shall give the Attorney General and the Secretary  
of State written notice of, and an opportunity to submit written comments  
about, the filing. On the initiative of the Secretary of Transportation or on  
request of the Attorney General or Secretary of State, the Secretary of  
Transportation may conduct a hearing to decide whether an agreement, re-  
quest, modification, or cancellation is consistent with this part whether or  
not it was approved previously.

(2) In a proceeding before the Secretary of Transportation applying  
standards under subsection (b)(1) of this section, a party opposing an  
agreement, request, modification, or cancellation has the burden of proving  
that it substantially reduces or eliminates competition and that less anti-  
competitive alternatives are available. The party defending the agreement,  
request, modification, or cancellation has the burden of proving the trans-  
portation need or public benefits.

(3) The Secretary of Transportation shall include the findings required  
by subsection (b)(1) of this section in an order of the Secretary approving  
or disapproving an agreement, request, modification, or cancellation.

#### **§ 41310. Discriminatory practices**

(a) PROHIBITION.—An air carrier or foreign air carrier may not subject  
a person, place, port, or type of traffic in foreign air transportation to un-  
reasonable discrimination.

(b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN CHARGES.—(1) The Secretary of Transportation shall survey charges imposed on an air carrier by the government of a foreign country or another foreign entity for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation decides that a charge is discriminatory, the Secretary promptly shall report the decision to the Secretary of State. The Secretaries of State and Transportation promptly shall begin negotiations with the appropriate government to end the discrimination. If the discrimination is not ended in a reasonable time through negotiation, the Secretary of Transportation shall establish a compensating charge equal to the discriminatory charge. With the approval of the Secretary of State, the Secretary of the Treasury shall impose the compensating charge on a foreign air carrier of that country as a condition to accepting the general declaration of the aircraft of the foreign air carrier when it lands or takes off.

(2) The Secretary of the Treasury shall maintain an account to credit money collected under paragraph (1) of this subsection. An air carrier shall be paid from the account an amount certified by the Secretary of Transportation to compensate the air carrier for the discriminatory charge paid to the government.

(c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of Transportation may take actions the Secretary considers are in the public interest to eliminate an activity of a government of a foreign country or another foreign entity, including a foreign air carrier, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity—

(A) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against an air carrier; or

(B) imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market.

(2) The Secretary of Transportation may deny, amend, modify, suspend, revoke, or transfer under paragraph (1) of this subsection a foreign air carrier permit or tariff under section 41302, 41303, 41304(a), 41504(c), 41507, or 41509 of this title.

(d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier or a department, agency, or instrumentality of the United States Government may file a complaint under subsection (c) of this section with the Secretary of Transportation. The Secretary shall approve, deny, or dismiss the complaint, set the complaint for a hearing or investigation, or begin another proceeding proposing remedial action not later than 60 days after receiving the complaint. The Secretary may extend the period for acting for additional periods totaling not more than 30 days if the Secretary decides that

1 with additional time it is likely that a complaint can be resolved satisfac-  
 2 torily through negotiations with the government of the foreign country or  
 3 foreign entity. The Secretary must act not later than 90 days after receiving  
 4 the complaint. However, the Secretary may extend this 90-day period for  
 5 not more than an additional 90 days if, on the last day of the initial 90-  
 6 day period, the Secretary finds that—

7 (A) negotiations with the government have progressed to a point that  
 8 a satisfactory resolution of the complaint appears imminent;

9 (B) an air carrier has not been subjected to economic injury by the  
 10 government or entity as a result of filing the complaint; and

11 (C) the public interest requires additional time before the Secretary  
 12 acts on the complaint.

13 (2) In carrying out paragraph (1) of this subsection and subsection (c)  
 14 of this section, the Secretary of Transportation shall—

15 (A) solicit the views of the Secretaries of Commerce and State and  
 16 the United States Trade Representative;

17 (B) give an affected air carrier or foreign air carrier reasonable no-  
 18 tice and an opportunity to submit written evidence and arguments  
 19 within the time limits of this subsection; and

20 (C) submit to the President under section 41307 or 41509(f) of this  
 21 title actions proposed by the Secretary of Transportation.

22 (e) REVIEW.—(1) The Secretaries of State, the Treasury, and Transpor-  
 23 tation and the heads of other departments, agencies, and instrumentalities  
 24 of the Government shall keep under review, to the extent of each of their  
 25 jurisdictions, each form of discrimination or unfair competitive practice to  
 26 which an air carrier is subject when providing foreign air transportation.  
 27 Each Secretary and head shall—

28 (A) take appropriate action to eliminate any discrimination or unfair  
 29 competitive practice found to exist; and

30 (B) request Congress to enact legislation when the authority to elimi-  
 31 nate the discrimination or unfair practice is inadequate.

32 (2) The Secretary of Transportation shall report to Congress annually on  
 33 each action taken under paragraph (1) of this subsection and on the con-  
 34 tinuing program to eliminate discrimination and unfair competitive prac-  
 35 tices. The Secretaries of State and the Treasury each shall give the Sec-  
 36 retary of Transportation information necessary to prepare the report.

37 (f) REPORTS.—Not later than 30 days after acting on a complaint under  
 38 this section, the Secretary of Transportation shall report to the Committee  
 39 on Public Works and Transportation of the House of Representatives and  
 40 the Committee on Commerce, Science, and Transportation of the Senate on  
 41 action taken under this section on the complaint.

## CHAPTER 415—RATES

Sec.

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### **§ 41501. Establishing reasonable rates, classifications, rules, practices, and divisions of joint rates for foreign air transportation**

Every air carrier and foreign air carrier shall establish, comply with, and enforce—

(1) reasonable rates, classifications, rules, and practices related to foreign air transportation; and

(2) for joint rates established for foreign air transportation, reasonable divisions of those rates among the participating air carriers or foreign air carriers without unreasonably discriminating against any of those carriers.

### **§ 41502. Establishing joint rates for through routes with other common carriers**

(a) JOINT RATES.—An air carrier may establish reasonable joint rates with another common carrier for through service provided under section 41101(b) of this title. However, an air carrier not directly operating aircraft in air transportation (except an air express company) may not establish under this section a joint rate for the transportation of property with a common carrier subject to subtitle IV of this title.

(b) RATES, CLASSIFICATIONS, RULES, AND PRACTICES AND DIVISIONS OF JOINT RATES.—For through service by an air carrier and a common carrier subject to subtitle IV of this title, the participating carriers shall establish—

(1) reasonable rates and reasonable classifications, rules, and practices affecting those rates or the value of the transportation provided under those rates; and

(2) for joint rates established for the through service, reasonable divisions of those joint rates among the participating carriers.



(c) STATEMENTS INCLUDED IN TARIFFS.—An air carrier and a common carrier subject to subtitle IV of this title that are participating in through service and joint rates shall include in their tariffs, filed with the Secretary of Transportation, a statement showing the through service and joint rates.

**§ 41503. Establishing joint rates for through routes provided by State authorized carriers**

Subject to sections 41309 and 42111 of this title, a citizen of the United States providing transportation under section 41101(b) of this title may make an agreement with an air carrier or foreign air carrier for joint rates for that transportation. The joint rates agreed to must be the lowest of—

(1) the sum of the applicable rates for—

(A) the part of the transportation provided in the State and approved by the appropriate State authority; and

(B) the part of the transportation provided by the air carrier or foreign air carrier;

(2) a joint rate established and filed under section 41504 of this title; or

(3) a joint rate prescribed by the Secretary of Transportation under section 41507 of this title.

**§ 41504. Tariffs for foreign air transportation**

(a) FILING AND CONTENTS.—In the way prescribed by regulation by the Secretary of Transportation, every air carrier and foreign air carrier shall file with the Secretary, publish, and keep open to public inspection, tariffs showing the rates for the foreign air transportation provided between places served by the carrier and provided between places served by the carrier and places served by another air carrier or foreign air carrier with which through service and joint rates have been established. A tariff—

(1) shall contain—

(A) to the extent the Secretary requires by regulation, a description of the classifications, rules, and practices related to the foreign air transportation;

(B) a statement of the rates in money of the United States; and

(C) other information the Secretary requires by regulation; and

(2) may contain—

(A) a statement of the rates in money that is not money of the United States; and

(B) information that is required under the laws of a foreign country in or to which the air carrier or foreign air carrier is authorized to operate.

(b) CHANGES.—(1) Except as provided in paragraph (2) of this subsection, an air carrier or foreign air carrier may change a rate or a classi-

1      fication, rule, or practice affecting that rate or the value of the transpor-  
 2      tation provided under that rate, specified in a tariff of the carrier for for-  
 3      eign air transportation only after 30 days after the carrier has filed, pub-  
 4      lished, and posted notice of the proposed change in the same way as re-  
 5      quired for a tariff under subsection (a) of this section. However, the Sec-  
 6      retary may prescribe an alternative notice requirement, of at least 25 days,  
 7      to allow an air carrier or foreign air carrier to match a proposed change  
 8      in a passenger rate or a charge of another air carrier or foreign air carrier.  
 9      A notice under this paragraph must state plainly the change proposed and  
 10     when the change will take effect.

11     (2) If the effect of a proposed change would be to begin a passenger rate  
 12     that is outside of, or not covered by, the range of passenger rates specified  
 13     under section 41509(e) (2) and (3) of this title, the proposed change may  
 14     be put into effect only on the expiration of 60 days after the notice is filed  
 15     under regulations prescribed by the Secretary.

16     (c) REJECTION OF CHANGES.—The Secretary may reject a tariff or tariff  
 17     change that is not consistent with this section and regulations prescribed  
 18     by the Secretary. A tariff or change that is rejected is void.

19     **§ 41505. Uniform methods for establishing joint rates, and**  
 20                    **divisions of joint rates, applicable to commuter air**  
 21                    **carriers**

22     (a) DEFINITION.—In this section, “commuter air carrier” means an air  
 23     carrier providing transportation under section 40109(f) of this title that  
 24     provides at least 5 scheduled roundtrips a week between the same 2 places.

25     (b) GENERAL.—Except as provided in subsection (c) of this section, when  
 26     the Secretary of Transportation prescribes under section 41508 or 41509  
 27     of this title a uniform method generally applicable to establishing joint rates  
 28     and divisions of joint rates for and between air carriers holding certificates  
 29     issued under section 41102 of this title, the Secretary shall make that uni-  
 30     form method apply to establishing joint rates and divisions of joint rates  
 31     for and between air carriers and commuter air carriers.

32     (c) NOTICE REQUIRED BEFORE MODIFYING, SUSPENDING, OR ENDING  
 33     TRANSPORTATION.—A commuter air carrier that has an agreement with an  
 34     air carrier to provide transportation for passengers and property that in-  
 35     cludes through service by the commuter air carrier over the commuter air  
 36     carrier’s routes and air transportation provided by the air carrier shall give  
 37     the air carrier and the Secretary at least 90 days’ notice before modifying,  
 38     suspending, or ending the transportation. If the commuter air carrier does  
 39     not give that notice, the uniform method of establishing joint rates and divi-  
 40     sions of joint rates referred to in subsection (b) of this section does not  
 41     apply to the commuter air carrier.

**§ 41506. Rate division filing requirements for foreign air transportation**

Every air carrier and foreign air carrier shall keep currently on file with the Secretary of Transportation, if the Secretary requires, the established divisions of all joint rates for foreign air transportation in which the carrier participates.

**§ 41507. Authority of the Secretary of Transportation to change rates, classifications, rules, and practices for foreign air transportation**

(a) GENERAL.—When the Secretary of Transportation decides that a rate charged or received by an air carrier or foreign air carrier for foreign air transportation, or a classification, rule, or practice affecting that rate or the value of the transportation provided under that rate, is or will be unreasonably discriminatory, the Secretary may—

(1) change the rate, classification, rule, or practice as necessary to correct the discrimination; and

(2) order the air carrier or foreign air carrier to stop charging or collecting the discriminatory rate or carrying out the discriminatory classification, rule, or practice.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

**§ 41508. Authority of the Secretary of Transportation to adjust divisions of joint rates for foreign air transportation**

(a) GENERAL.—When the Secretary of Transportation decides that a division between air carriers, foreign air carriers, or both, of a joint rate for foreign air transportation is or will be unreasonable or unreasonably discriminatory against any of those carriers, the Secretary shall prescribe a reasonable division of the joint rate among those carriers. The Secretary may order the adjustment in the division of the joint rate to be made retroactively to the date the complaint was filed, the date the order for an investigation was made, or a later date the Secretary decides is reasonable.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

**§ 41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation**

(a) CANCELLATION AND REJECTION.—(1) On the initiative of the Secretary of Transportation or on a complaint filed with the Secretary, the Sec-

1     retary may conduct a hearing to decide whether a rate for foreign air trans-  
 2     portation contained in an existing or newly filed tariff of an air carrier or  
 3     foreign air carrier, a classification, rule, or practice affecting that rate, or  
 4     the value of the transportation provided under that rate, is lawful. The Sec-  
 5     retary may begin the hearing at once and without an answer or another for-  
 6     mal pleading by the air carrier or foreign air carrier, but only after reason-  
 7     able notice. If, after the hearing, the Secretary decides that the rate, classi-  
 8     fication, rule, or practice is or will be unreasonable or unreasonably dis-  
 9     criminatory, the Secretary may cancel or reject the tariff and prevent the  
 10    use of the rate, classification, rule, or practice.

11    (2) With or without a hearing, the Secretary may cancel or reject an ex-  
 12    isting or newly filed tariff of a foreign air carrier and prevent the use of  
 13    a rate, classification, rule, or practice when the Secretary decides that the  
 14    cancellation or rejection is in the public interest.

15    (3) In deciding whether to cancel or reject a tariff of an air carrier or  
 16    foreign air carrier under this subsection, the Secretary shall consider—

17        (A) the effect of the rate on the movement of traffic;

18        (B) the need in the public interest of adequate and efficient trans-  
 19        portation by air carriers and foreign air carriers at the lowest cost con-  
 20        sistent with providing the transportation;

21        (C) the standards prescribed under law related to the character and  
 22        quality of transportation to be provided by air carriers and foreign air  
 23        carriers;

24        (D) the inherent advantages of transportation by aircraft;

25        (E) the need of the air carrier and foreign air carrier for revenue  
 26        sufficient to enable the air carrier and foreign air carrier, under honest,  
 27        economical, and efficient management, to provide adequate and effi-  
 28        cient air carrier and foreign air carrier transportation;

29        (F) whether the rate will be predatory or tend to monopolize com-  
 30        petition among air carriers and foreign air carriers in foreign air trans-  
 31        portation;

32        (G) reasonably estimated or foreseeable future costs and revenues for  
 33        the air carrier or foreign air carrier for a reasonably limited future pe-  
 34        riod during which the rate would be in effect; and

35        (H) other factors.

36    (b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of  
 37    this section, the Secretary may suspend a tariff and the use of a rate con-  
 38    tained in the tariff or a classification, rule, or practice affecting that rate.

39    (B) The Secretary may suspend a tariff of a foreign air carrier and the  
 40    use of a rate, classification, rule, or practice when the suspension is in the  
 41    public interest.

(2) A suspension becomes effective when the Secretary files with the tariff and delivers to the air carrier or foreign air carrier affected by the suspension a written statement of the reasons for the suspension. To suspend a tariff, reasonable notice of the suspension must be given to the affected carrier.

(3) The suspension of a newly filed tariff may be for periods totaling not more than 365 days after the date the tariff otherwise would go into effect. The suspension of an existing tariff may be for periods totaling not more than 365 days after the effective date of the suspension. The Secretary may rescind at any time the suspension of a newly filed tariff and allow the rate, classification, rule, or practice to go into effect.

(c) EFFECTIVE TARIFFS AND RATES WHEN TARIFF IS SUSPENDED, CANCELED, OR REJECTED.—(1) If a tariff is suspended pending the outcome of a proceeding under subsection (a) of this section and the Secretary does not take final action in the proceeding during the suspension period, the tariff goes into effect at the end of that period subject to cancellation when the proceeding is concluded.

(2)(A) During the period of suspension, or after the cancellation or rejection, of a newly filed tariff (including a tariff that has gone into effect provisionally), the affected air carrier or foreign air carrier shall maintain in effect and use—

(i) the corresponding seasonal rates, or the classifications, rules, and practices affecting those rates or the value of transportation provided under those rates, that were in effect for the carrier immediately before the new tariff was filed; or

(ii) another rate provided for under an applicable intergovernmental agreement or understanding.

(B) If the suspended, canceled, or rejected tariff is the first tariff of the carrier for the covered transportation, the carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a rate or another classification, rule, or practice affecting the rate, or the value of the transportation provided under the rate, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(3) If an existing tariff is suspended or canceled, the affected air carrier or foreign air carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a rate or another classification, rule, or practice affecting the rate, or the value of the transportation provided under the rate, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(d) RESPONSE TO REFUSAL OF FOREIGN COUNTRY TO ALLOW AIR CARRIER TO CHARGE A RATE.—When the Secretary finds that the government or an aeronautical authority of a foreign country has refused to allow an air carrier to charge a rate contained in a tariff filed and published under section 41504 of this title for foreign air transportation to the foreign country—

(1) the Secretary, without a hearing—

(A) may suspend any existing tariff of a foreign air carrier providing transportation between the United States and the foreign country for periods totaling not more than 365 days after the date of the suspension; and

(B) may order the foreign air carrier to charge, during the suspension periods, rates that are the same as those contained in a tariff (designated by the Secretary) of an air carrier filed and published under section 41504 of this title for foreign air transportation to the foreign country; and

(2) a foreign air carrier may continue to provide foreign air transportation to the foreign country only if the government or aeronautical authority of the foreign country allows an air carrier to start or continue foreign air transportation to the foreign country at the rates designated by the Secretary.

(e) STANDARD FOREIGN FARE LEVEL.—(1)(A) In this subsection, “standard foreign fare level” means—

(i) for a class of fares existing on October 1, 1979, the fare between 2 places (as adjusted under subparagraph (B) of this paragraph) filed for and allowed by the Civil Aeronautics Board to go into effect after September 30, 1979, and before August 13, 1980 (with seasonal fares adjusted by the percentage difference that prevailed between seasons in 1978), or the fare established under section 1002(j)(8) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by section 24(a) of the International Air Transportation Competition Act of 1979 (Public Law 96–192, 94 Stat. 46); or

(ii) for a class of fares established after October 1, 1979, the fare between 2 places in effect on the effective date of the establishment of the new class.

(B) At least once every 60 days for fuel costs, and at least once every 180 days for other costs, the Secretary shall adjust the standard foreign fare level for the particular foreign air transportation to which the standard foreign fare level applies by increasing or decreasing that level by the percentage change from the last previous period in the actual operating cost for each available seat-mile. In adjusting a standard foreign fare level, the

Secretary may not make an adjustment to costs actually incurred. In establishing a standard foreign fare level and making adjustments in the level under this paragraph, the Secretary may use all relevant or appropriate information reasonably available to the Secretary.

(2) The Secretary may not decide that a proposed fare for foreign air transportation is unreasonable on the basis that the fare is too low or too high if the proposed fare is neither more than 5 percent higher nor 50 percent lower than the standard foreign fare level for the same or essentially similar class of transportation. The Secretary by regulation may increase the 50 percent specified in this paragraph.

(3) Paragraph (2) of this subsection does not apply to a proposed fare that is not more than—

(A) 5 percent higher than the standard foreign fare level when the Secretary decides that the proposed fare may be unreasonably discriminatory or that suspension of the fare is in the public interest because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier; or

(B) 50 percent lower than the standard foreign fare level when the Secretary decides that the proposed fare may be predatory or discriminatory or that suspension of the fare is required because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier.

(f) SUBMISSION OF ORDERS TO PRESIDENT.—The Secretary shall submit to the President an order made under this section suspending, canceling, or rejecting a rate for foreign air transportation, and an order rescinding the effectiveness of such an order, before publishing the order. Not later than 10 days after its submission, the President may disapprove the order on finding disapproval is necessary for United States foreign policy or national defense reasons.

(g) COMPLIANCE AS CONDITION OF CERTIFICATE OR PERMIT.—This section and compliance with an order of the Secretary under this section are conditions to any certificate or permit held by an air carrier or foreign air carrier. An air carrier or foreign air carrier may provide foreign air transportation only as long as the carrier maintains rates for that transportation that comply with this section and orders of the Secretary under this section.

#### **§41510. Required adherence to foreign air transportation tariffs**

(a) PROHIBITED ACTIONS BY AIR CARRIERS, FOREIGN AIR CARRIERS, AND TICKET AGENTS.—An air carrier, foreign air carrier, or ticket agent may not—

(1) charge or receive compensation for foreign air transportation that is different from the rate specified in the tariff of the carrier that is in effect for that transportation;

(2) refund or remit any part of the rate specified in the tariff; or

(3) extend to any person a privilege or facility, related to a matter required by the Secretary of Transportation to be specified in a tariff for foreign air transportation, except as specified in the tariff.

(b) PROHIBITED ACTIONS BY ANY PERSON.—A person may not knowingly—

(1) pay compensation for foreign air transportation of property that is different from the rate specified in the tariff in effect for that transportation; or

(2) solicit, accept, or receive—

(A) a refund or remittance of any part of the rate specified in the tariff; or

(B) a privilege or facility, related to a matter required by the Secretary to be specified in a tariff for foreign air transportation of property, except as specified in the tariff.

**§ 41511. Special fares for foreign air transportation**

(a) FREE AND REDUCED FARES.—This chapter does not prohibit an air carrier or foreign air carrier, under terms the Secretary of Transportation prescribes, from issuing or interchanging tickets or passes for free or reduced-fare foreign air transportation to or for the following:

(1) A director, officer, or employee of the carrier (including a retired director, officer, or employee who is receiving retirement benefits from an air carrier or foreign air carrier).

(2) A parent or the immediate family of such an officer or employee or the immediate family of such a director.

(3) A widow, widower, or minor child of an employee of the carrier who died as a direct result of a personal injury sustained when performing a duty in the service of the carrier.

(4) A witness or attorney attending a legal investigation in which the air carrier is interested.

(5) An individual injured in an aircraft accident and a physician or nurse attending the individual.

(6) A parent or the immediate family of an individual injured or killed in an aircraft accident when the transportation is related to the accident.

(7) An individual or property to provide relief in a general epidemic, pestilence, or other emergency.



1 (8) Other individuals under other circumstances the Secretary pre-  
 2 scribes by regulation.

3 (b) SPACE-AVAILABLE BASIS.—Under terms the Secretary prescribes, an  
 4 air carrier or foreign air carrier may grant reduced-fare foreign air trans-  
 5 portation on a space-available basis to the following:

6 (1) A minister of religion.

7 (2) An individual who is at least 60 years of age and no longer gain-  
 8 fully employed.

9 (3) An individual who is at least 65 years of age.

10 (4) An individual who has severely impaired vision or hearing or an-  
 11 other physical or mental handicap and an accompanying attendant  
 12 needed by that individual.

### 13 **CHAPTER 417—OPERATIONS OF CARRIERS**

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#### 14 SUBCHAPTER I—REQUIREMENTS

##### 15 **§ 41701. Classification of air carriers**

16 The Secretary of Transportation may establish—

17 (1) reasonable classifications for air carriers when required because  
 18 of the nature of the transportation provided by them; and

19 (2) reasonable requirements for each class when the Secretary de-  
 20 cides those requirements are necessary in the public interest.

**§ 41702. Interstate air transportation**

An air carrier shall provide safe and adequate interstate air transportation.

**§ 41703. Navigation of foreign civil aircraft**

(a) PERMITTED NAVIGATION.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only—

(1) if the country of registry grants a similar privilege to aircraft of the United States;

(2) by an airman holding a certificate or license issued or made valid by the United States Government or the country of registry;

(3) if the Secretary of Transportation authorizes the navigation; and

(4) if the navigation is consistent with terms the Secretary may prescribe.

(b) REQUIREMENTS FOR AUTHORIZING NAVIGATION.—The Secretary may authorize navigation under this section only if the Secretary decides the authorization is—

(1) in the public interest; and

(2) consistent with any agreement between the Government and the government of a foreign country.

(c) PROVIDING AIR COMMERCE.—The Secretary may authorize an aircraft permitted to navigate in the United States under this section to provide air commerce in the United States. However, the aircraft may take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if—

(1) specifically authorized under section 40109(g) of this title; or

(2) under regulations the Secretary prescribes authorizing air carriers to provide otherwise authorized air transportation with foreign registered aircraft under lease or charter to them without crew.

(d) PERMIT REQUIREMENTS NOT AFFECTED.—This section does not affect section 41301 or 41302 of this title. However, a foreign air carrier holding a permit under section 41302 does not need to obtain additional authorization under this section for an operation authorized by the permit.

**§ 41704. Transporting property not to be transported in aircraft cabins**

Under regulations or orders of the Secretary of Transportation, an air carrier shall transport as baggage the property of a passenger traveling in air transportation that may not be carried in an aircraft cabin because of a law or regulation of the United States. The carrier is liable to pay an amount not more than the amount declared to the carrier by that passenger for actual loss of, or damage to, the property caused by the carrier. The carrier may impose reasonable charges and conditions for its liability.

**§ 41705. Discrimination against handicapped individuals**

In providing air transportation, an air carrier may not discriminate against an otherwise qualified individual on the following grounds:

- (1) The individual has a physical or mental impairment that substantially limits one or more major life activities.
- (2) The individual has a record of such an impairment.
- (3) The individual is regarded as having such an impairment.

**§ 41706. Prohibitions against smoking on scheduled flights**

(a) GENERAL.—An individual may not smoke in the passenger cabin or lavatory of an aircraft on a scheduled airline flight segment in air transportation or intrastate air transportation that is—

- (1) between places in a State of the United States, the District of Columbia, Puerto Rico, or the Virgin Islands;
- (2) between a place in any jurisdiction referred to in clause (1) of this subsection (except Alaska and Hawaii) and a place in any other of those jurisdictions; or
- (3)(A) scheduled for not more than 6 hours' duration; and
- (B)(i) between a place referred to in clause (1) of this subsection (except Alaska and Hawaii) and Alaska or Hawaii; or
- (ii) between Alaska and Hawaii.

(b) REGULATIONS.—The Secretary of Transportation shall prescribe regulations necessary to carry out this section.

**§ 41707. Incorporating contract terms into written instrument**

To the extent the Secretary of Transportation prescribes by regulation, an air carrier may incorporate by reference in a ticket or written instrument any term of the contract for providing interstate air transportation.

**§ 41708. Reports**

(a) APPLICATION.—To the extent the Secretary of Transportation finds necessary to carry out this subpart, this section and section 41709 of this title apply to a person controlling an air carrier or affiliated (within the meaning of section 11343(c) of this title) with a carrier.

(b) REQUIREMENTS.—The Secretary may require an air carrier or foreign air carrier—

- (1)(A) to file annual, monthly, periodical, and special reports with the Secretary in the form and way prescribed by the Secretary; and
- (B) to file the reports under oath;
- (2) to provide specific answers to questions on which the Secretary considers information to be necessary; and

1 (3) to file with the Secretary a copy of each agreement, arrangement,  
 2 contract, or understanding between the carrier and another carrier or  
 3 person related to transportation affected by this subpart.

4 **§ 41709. Records of air carriers**

5 (a) REQUIREMENTS.—The Secretary of Transportation shall prescribe the  
 6 form of records to be kept by an air carrier, including records on the move-  
 7 ment of traffic, receipts and expenditures of money, and the time period  
 8 during which the records shall be kept. A carrier may keep only records pre-  
 9 scribed or approved by the Secretary. However, a carrier may keep addi-  
 10 tional records if the additional records do not impair the integrity of the  
 11 records prescribed or approved by the Secretary and are not an unreason-  
 12 able financial burden on the carrier.

13 (b) INSPECTION.—(1) The Secretary at any time may—

14 (A) inspect the land, buildings, and equipment of an air carrier or  
 15 foreign air carrier when necessary to decide under subchapter II of this  
 16 chapter or section 41102, 41103, or 41302 of this title whether a car-  
 17 rier is fit, willing, and able; and

18 (B) inspect records kept or required to be kept by an air carrier, for-  
 19 eign air carrier, or ticket agent.

20 (2) The Secretary may employ special agents or auditors to carry out this  
 21 subsection.

22 **§ 41710. Time requirements**

23 When a matter requiring action of the Secretary of Transportation is sub-  
 24 mitted under section 40109(a) or (c)–(h), 41309, or 42111 of this title and  
 25 an evidentiary hearing—

26 (1) is ordered, the Secretary shall make a final decision on the mat-  
 27 ter not later than the last day of the 12th month that begins after the  
 28 date the matter is submitted; or

29 (2) is not ordered, the Secretary shall make a final decision on the  
 30 matter not later than the last day of the 6th month that begins after  
 31 the date the matter is submitted.

32 **§ 41711. Air carrier management inquiry and cooperation**  
 33 **with other authorities**

34 In carrying out this subpart, the Secretary of Transportation may—

35 (1) inquire into the management of the business of an air carrier  
 36 and obtain from the air carrier, and a person controlling, controlled by,  
 37 or under common control with the carrier, information the Secretary  
 38 decides reasonably is necessary to carry out the inquiry;

39 (2) confer and hold a joint hearing with a State authority; and

(3) exchange information related to aeronautics with a government of a foreign country through appropriate departments, agencies, and instrumentalities of the United States Government.

**§41712. Unfair and deceptive practices and unfair methods of competition**

On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

**§41713. Preemption of authority over rates, routes, and service**

(a) DEFINITION.—In this section, “State” means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a rate, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraph (1) of this subsection does not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

**§41731. Definitions**

(a) GENERAL.—In this subchapter—

(1) “eligible place” means a place in the United States that—

(A) was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;

(B) received scheduled air transportation at any time after January 1, 1990; and

(C) is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under this subchapter.

(2) “enhanced essential air service” means scheduled air transportation to an eligible place of a higher level or quality than basic essential air service described in section 41732 of this title;

(3) “hub airport” means an airport that each year has at least .25 percent of the total annual boardings in the United States;

(4) “nonhub airport” means an airport that each year has less than .05 percent of the total annual boardings in the United States; and

(5) “small hub airport” means an airport that each year has at least .05 percent, but less than .25 percent, of the total annual boardings in the United States.

(b) LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE PLACE.—The Secretary of Transportation may not decide that a place described in subsection (a)(1) of this section is not an eligible place on the basis of a passenger subsidy at that place or on another basis that is not specifically stated in this subchapter.

#### **§ 41732. Basic essential air service**

(a) GENERAL.—Basic essential air service provided under section 41733 of this title is scheduled air transportation of passengers and cargo—

(1) to a hub airport that has convenient connecting or single-plane air service to a substantial number of destinations beyond that airport; or

(2) to a small hub or nonhub airport, when in Alaska or when the nearest hub airport is more than 400 miles from an eligible place.

(b) MINIMUM REQUIREMENTS.—Basic essential air service shall include at least the following:

(1)(A) for a place not in Alaska, 2 daily round trips 6 days a week, with not more than one intermediate stop on each flight; or

(B) for a place in Alaska, a level of service at least equal to that provided in 1976 or 2 round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(2) flights at reasonable times considering the needs of passengers with connecting flights at the airport and at rates that are not excessive compared to the generally prevailing rates of other air carriers for like service between similar places.

(3) for a place not in Alaska, service provided in an aircraft with an effective capacity of at least 15 passengers if the average daily

boardings at the place in any calendar year from 1976-1986 were more than 11 passengers unless—

(A) that level-of-service requirement would require paying compensation in a fiscal year under section 41733(d) or 41734(d) or (e) of this title for the place when compensation otherwise would not have been paid for that place in that year; or

(B) the affected community agrees with the Secretary in writing to the use of smaller aircraft to provide service to the place.

(4) service accommodating the estimated passenger and property traffic at an average load factor, for each class of traffic considering seasonal demands for the service, of not more than—

(A) 50 percent; or

(B) 60 percent when service is provided by aircraft with more than 14 passenger seats.

(5) service provided in aircraft with at least 2 engines and using 2 pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least 2 engines and using 2 pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(6) service provided by pressurized aircraft when the service is provided by aircraft that regularly fly above 8,000 feet in altitude.

#### **§41733. Level of basic essential air service**

(a) DECISIONS MADE BEFORE OCTOBER 1, 1988.—For each eligible place for which a decision was made before October 1, 1988, under section 419 of the Federal Aviation Act of 1958, establishing the level of essential air transportation, the level of basic essential air service for that place shall be the level established by the Secretary of Transportation for that place by not later than December 29, 1988.

(b) DECISIONS NOT MADE BEFORE OCTOBER 1, 1988.—(1) The Secretary shall decide on the level of basic essential air service for each eligible place for which a decision was not made before October 1, 1988, establishing the level of essential air transportation, when the Secretary receives notice that service to that place will be provided by only one air carrier. The Secretary shall make the decision by the last day of the 6-month period beginning on the date the Secretary receives the notice. The Secretary may impose notice requirements necessary to carry out this subsection. Before making a decision, the Secretary shall consider the views of any interested community and the appropriate State authority of the State in which the community is located.

(2) Until the Secretary has made a decision on a level of basic essential air service for an eligible place under this subsection, the Secretary, on petition by an appropriate representative of the place, shall prohibit an air car-

rier from ending, suspending, or reducing air transportation to that place that appears to deprive the place of basic essential air service.

(c) AVAILABILITY OF COMPENSATION.—(1) If the Secretary decides that basic essential air service will not be provided to an eligible place without compensation, the Secretary shall provide notice that an air carrier may apply to provide basic essential air service to the place for compensation under this section. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the demonstrated reliability of the applicant in providing scheduled air service;

(B) the contractual and marketing arrangements the applicant has made with a larger carrier to ensure service beyond the hub airport;

(C) the interline arrangements that the applicant has made with a larger carrier to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier through one reservation, ticket, and baggage check-in;

(D) the preferences of the actual and potential users of air transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users; and

(E) for an eligible place in Alaska, the experience of the applicant in providing, in Alaska, scheduled air service, or significant patterns of non-scheduled air service under an exemption granted under section 40109(a) and (c)–(h) of this title.

(2) Under guidelines prescribed under section 41737(a) of this title, the Secretary shall pay the rate of compensation for providing basic essential air service under this section and section 41734 of this title.

(d) COMPENSATION PAYMENTS.—The Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation to an air carrier for providing basic essential air service to an eligible place when the Secretary decides the compensation is no longer necessary to maintain basic essential air service to the place.

(e) REVIEW.—The Secretary shall review periodically the level of basic essential air service for each eligible place. Based on the review and consultations with an interested community and the appropriate State authority of the State in which the community is located, the Secretary may make appropriate adjustments in the level of service.

#### **§41734. Ending, suspending, and reducing basic essential air service**

(a) NOTICE REQUIRED.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of basic essential air serv-



ice established for that place under section 41733 of this title only after giving the Secretary of Transportation, the appropriate State authority, and the affected communities at least 90 days' notice before ending, suspending, or reducing that transportation.

(b) CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.—If at the end of the notice period under subsection (a) of this section the Secretary has not found another air carrier to provide basic essential air service to the eligible place, the Secretary shall require the carrier providing notice to continue to provide basic essential air service to the place for an additional 30-day period or until another carrier begins to provide basic essential air service to the place, whichever occurs first.

(c) CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.—If at the end of the 30-day period under subsection (b) of this section the Secretary decides another air carrier will not provide basic essential air service to the place on a continuing basis, the Secretary shall require the carrier providing service to continue to provide service for additional 30-day periods until another carrier begins providing service on a continuing basis. At the end of each 30-day period, the Secretary shall decide if another carrier will provide service on a continuing basis.

(d) CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.—If an air carrier receiving compensation under section 41733 of this title for providing basic essential air service to an eligible place is required to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section, the Secretary shall continue to pay that compensation after the last day of that period. The Secretary shall pay the compensation until the Secretary finds another carrier to provide the service to the place or the 90th day after the end of that notice period, whichever is earlier. If, after the 90th day after the end of the 90-day notice period, the Secretary has not found another carrier to provide the service, the carrier required to continue to provide that service shall receive compensation sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(e) COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE WITHOUT COMPENSATION.—If the Secretary requires an air carrier providing basic essential air service to an eligible place without compensation under section 41733 of this title to continue providing that service after the 90-day notice period required by subsection (a) of this section, the Secretary shall provide the carrier with compensation after the end of the 90-day notice period that is sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(f) FINDING REPLACEMENT CARRIERS.—When the Secretary requires an air carrier to continue to provide basic essential air service to an eligible place, the Secretary shall continue to make every effort to find another carrier to provide at least that basic essential air service to the place on a continuing basis.

(g) TRANSFER OF AUTHORITY.—If an air carrier, providing basic essential air service under section 41733 of this title between an eligible place and an airport at which the Administrator of the Federal Aviation Administration limits the number of instrument flight rule takeoffs and landings of aircraft, provides notice under subsection (a) of this section of an intention to end, suspend, or reduce that service and another carrier is found to provide the service, the Secretary shall require the carrier providing notice to transfer any operational authority the carrier has to land or take off at that airport related to the service to the eligible place to the carrier that will provide the service, if—

(1) the carrier that will provide the service needs the authority; and

(2) the authority to be transferred is being used only to provide air service to the eligible place.

#### **§41735. Enhanced essential air service**

(a) PROPOSALS.—(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential air service to an eligible place for which basic essential air service is being provided under section 41733 of this title. The proposal shall—

(A) specify the level and type of enhanced essential air service the State or local government considers appropriate; and

1 (B) include an agreement related to compensation required for the  
2 proposed service.

3 (2) The agreement submitted under paragraph (1)(B) of this subsection  
4 shall provide that—

5 (A) the State or local government or a person pay 50 percent of the  
6 compensation required for the proposed service and the United States  
7 Government pay the remaining 50 percent; or

8 (B)(i) the Government pay 100 percent of the compensation; and

9 (ii) if the proposed service is not successful for at least a 2-year pe-  
10 riod under the criteria prescribed by the Secretary under paragraph (3)  
11 of this subsection, the eligible place is not eligible for air service or air  
12 transportation for which compensation is paid by the Secretary under  
13 this subchapter.

14 (3) The Secretary shall prescribe by regulation objective criteria for decid-  
15 ing whether enhanced essential air service to an eligible place under this sec-  
16 tion is successful in terms of—

17 (A) increasing passenger usage of the airport facilities at the place;  
18 and

19 (B) reducing the amount of compensation provided by the Secretary  
20 under this subchapter for that service.

21 (b) DECISIONS.—Not later than 90 days after receiving a proposal under  
22 subsection (a) of this section, the Secretary shall—

23 (1) approve the proposal if the Secretary decides the proposal is rea-  
24 sonable; or

25 (2) if the Secretary decides the proposal is not reasonable, dis-  
26 approve the proposal and notify the State or local government of the  
27 disapproval and the reasons for the disapproval.

28 (c) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensa-  
29 tion under this section when and in the way the Secretary decides is appro-  
30 priate. Compensation for enhanced essential air service under this section  
31 may be paid only for the costs incurred in providing air service to an eligible  
32 place that are in addition to the costs incurred in providing basic essential  
33 air service to the place under section 41733 of this title. The Secretary shall  
34 continue to pay compensation under this section only as long as—

35 (A) the air carrier maintains the level of enhanced essential air serv-  
36 ice;

37 (B) the State or local government or person agreeing to pay com-  
38 pensation under this section continues to pay the compensation; and

39 (C) the Secretary decides the compensation is necessary to maintain  
40 the service to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(d) REVIEW.—(1) The Secretary shall review periodically the enhanced essential air service provided to each eligible place under this section.

(2) For service for which the Government pays 50 percent of the compensation, based on the review and consultation with the affected community and the State or local government or person paying the remaining 50 percent of the compensation, the Secretary shall make appropriate adjustments in the type and level of service to the place.

(3) For service for which the Government pays 100 percent of the compensation, based on the review and consultation with the State or local government submitting the proposal, the Secretary shall decide whether the service has succeeded for at least a 2-year period under the criteria prescribed under subsection (a)(3) of this section. If unsuccessful, the place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(e) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of enhanced essential air service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days' notice before ending, suspending, or reducing the service. This subsection does not relieve the carrier of an obligation under section 41734 of this title.

#### **§ 41736. Air transportation to noneligible places**

(a) PROPOSALS AND DECISIONS.—(1) A State or local government may propose to the Secretary of Transportation that the Secretary provide compensation to an air carrier to provide air transportation to a place that is not an eligible place under this subchapter. Not later than 90 days after receiving a proposal under this section, the Secretary shall—

(A) decide whether to designate the place as eligible to receive compensation under this section; and

(B)(i) approve the proposal if the State or local government or a person is willing and able to pay 50 percent of the compensation for providing the transportation, and notify the State or local government of the approval; or

(ii) disapprove the proposal if the Secretary decides the proposal is not reasonable under paragraph (2) of this subsection, and notify the State or local government of the disapproval and the reasons for the disapproval.

(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors—

(A) the traffic-generating potential of the place;

(B) the cost to the United States Government of providing the proposed transportation; and

(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;

(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;

(3) the place is more than 150 miles from the nearest hub airport; and

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

(c) LEVEL OF AIR TRANSPORTATION.—(1) If the Secretary designates a place under subsection (a)(1) of this section as eligible for compensation under this section, the Secretary shall decide, not later than 6 months after the date of the designation, on the level of air transportation to be provided under this section. Before making a decision, the Secretary shall consider the views of any interested community, the appropriate State authority of the State in which the place is located, and the State or local government or person agreeing to pay compensation for the transportation under subsection (b)(4) of this section.

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may submit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the factors listed in section 41733(c)(1) of this title; and

(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appro-

priate. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;

(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and

(C) the Secretary decides the compensation is necessary to maintain the transportation to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(e) REVIEW.—The Secretary shall review periodically the level of air transportation provided under this section. Based on the review and consultation with any interested community, the appropriate State authority of the State in which the community is located, and the State or local government or person paying compensation under this section, the Secretary may make appropriate adjustments in the level of transportation.

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

(g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier providing air transportation for compensation under this section may end, suspend, or reduce that transportation below the level of transportation established by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation under this section at least 30 days' notice before ending, suspending, or reducing the transportation.

#### **§ 41737. Compensation guidelines, limitations, and claims**

(a) COMPENSATION GUIDELINES.—(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid; and

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter.

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter, the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(2) Not more than \$38,600,000 is available to the Secretary out of the Fund for each of the fiscal years ending September 30, 1993–1998, to incur obligations under this section. Amounts made available under this section remain available until expended.

#### **§ 41738. Fitness of air carriers**

Notwithstanding section 40109(a) and (c)–(h) of this title, an air carrier may provide air service to an eligible place or air transportation to a place designated under section 41736 of this title only when the Secretary of Transportation decides that—

(1) the carrier is fit, willing, and able to perform the service or transportation; and

1           (2) aircraft used to provide the service or transportation, and oper-  
 2           ations related to the service or transportation, conform to the safety  
 3           standards prescribed by the Administrator of the Federal Aviation  
 4           Administration.

5           **§ 41739. Air carrier obligations**

6           If at least 2 air carriers make an agreement to operate under or use a  
 7           single carrier designator code to provide air transportation, the carrier  
 8           whose code is being used shares responsibility with the other carriers for  
 9           the quality of transportation provided the public under the code by the other  
 10          carriers.

11          **§ 41740. Joint proposals**

12          The Secretary of Transportation shall encourage the submission of joint  
 13          proposals by 2 or more air carriers for providing air service or air transpor-  
 14          tation under this subchapter through arrangements that maximize the serv-  
 15          ice or transportation to and from major destinations beyond the hub.

16          **§ 41741. Insurance**

17          The Secretary of Transportation may pay an air carrier compensation  
 18          under this subchapter only when the carrier files with the Secretary an in-  
 19          surance policy or self-insurance plan approved by the Secretary. The policy  
 20          or plan must be sufficient to pay for bodily injury to, or death of, an indi-  
 21          vidual, or for loss of or damage to property of others, resulting from the  
 22          operation of aircraft, but not more than the amount of the policy or plan  
 23          limits.

24          **§ 41742. Ending effective date**

25          This subchapter is not effective after September 30, 1998.

26                   **CHAPTER 419—TRANSPORTATION OF MAIL**

Sec.

- 41901. General authority.
- 41902. Schedules for certain transportation of mail.
- 41903. Duty to provide certain transportation of mail.
- 41904. Noncitizens transporting mail to or in foreign countries.
- 41905. Regulating air carrier transportation of foreign mail.
- 41906. Emergency mail transportation.
- 41907. Rates for foreign transportation of mail.
- 41908. Rates for transporting mail of foreign countries.
- 41909. Duty to oppose unreasonable Universal Postal Union rates.
- 41910. Weighing mail.
- 41911. Evidence of providing mail service.
- 41912. Effect on foreign postal arrangements.

27          **§ 41901. General authority**

28          (a) TITLE 39.—The United States Postal Service may provide for the  
 29          transportation of mail by aircraft in interstate air transportation under sec-  
 30          tion 5402(d) and (f) of title 39.

31          (b) AUTHORITY TO PRESCRIBE RATES.—Except as provided in section  
 32          5402 of title 39, on the initiative of the Secretary of Transportation or on



petition by the Postal Service or an air carrier, the Secretary shall prescribe and publish—

(1) after notice and an opportunity for a hearing on the record, reasonable rates of compensation to be paid by the Postal Service for the transportation of mail by aircraft in foreign air transportation or between places in Alaska, the facilities used in and useful for the transportation of mail, and the services related to the transportation of mail for each carrier holding a certificate that authorizes that transportation;

(2) the methods used, whether by aircraft-mile, pound-mile, weight, space, or a combination of those or other methods, to determine the rates of compensation for each air carrier or class of air carriers; and

(3) the effective date of the rates.

(c) OTHER TRANSPORTATION.—In prescribing rates under subsection (b) of this section, the Secretary may include transportation other than by aircraft that is incidental to transportation of mail by aircraft or necessary because of emergency conditions related to aircraft operations.

(d) AUTHORITY TO PRESCRIBE DIFFERENT RATES.—Considering conditions peculiar to transportation by aircraft and to particular air carriers or classes of air carriers, the Secretary may prescribe different rates under this section for different air carriers or classes of air carriers and for different classes of service. In prescribing a rate for a carrier under this section, the Secretary shall consider, among other factors, the following:

(1) the condition that the carrier may hold and operate under a certificate authorizing the transportation of mail only by providing necessary and adequate facilities and service for the transportation of mail.

(2) standards related to the character and quality of service to be provided that are prescribed by or under law.

(e) STATEMENTS ON RATES.—A petition for prescribing a reasonable rate of compensation under this section must include a statement of the rate the petitioner believes is reasonable.

(f) STATEMENTS ON REQUIRED SERVICES.—The Postal Service shall introduce as part of the record in every proceeding under this section a comprehensive statement of the services to be required of the air carrier and other information the Postal Service has that the Secretary considers material to the proceeding.

(g) EXPIRATION DATE.—The authority of the Secretary under this part and section 5402 of title 39 providing for the transportation of mail by aircraft between places in Alaska expires on the date specified in section 5402(f) of title 39.

**§ 41902. Schedules for certain transportation of mail**

(a) REQUIREMENT.—Except as provided in section 41906 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft in foreign air transportation or between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.

(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

(1) the places between which the carrier is authorized to provide foreign air transportation;

(2) the places between which the carrier is authorized to transport mail in Alaska;

(3) every schedule of aircraft regularly operated by the carrier between places described in clauses (1) and (2) of this subsection and every change in each schedule; and

(4) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.

(c) DESIGNATING AND ADDITIONAL SCHEDULES.—The Postal Service may—

(1) designate any schedule of an air carrier filed under subsection (b)(3) of this section for the transportation of mail between the places between which the carrier is authorized by its certificate to transport mail; and

(2) require the carrier to establish additional schedules for the transportation of mail between those places.

(d) CHANGING SCHEDULES.—A schedule designated or required to be established for the transportation of mail under subsection (c) of this section may be changed only after 10 days' notice of the change is filed as provided in subsection (b)(3) of this section. The Postal Service may disapprove a proposed change in a schedule or amend or modify the schedule or proposed change.

(e) ORDERS.—An order of the Postal Service under this section may become effective only after 10 days after the order is issued. A person adversely affected by the order may appeal the order to the Secretary before the end of the 10-day period under regulations the Secretary prescribes. If the public convenience and necessity require, the Secretary may amend, modify, suspend, or cancel the order. Pending a decision about the order, the Secretary may postpone the effective date of the order.

(f) PROCEEDINGS PREFERENCES.—The Secretary shall give preference to a proceeding under this section over all other proceedings before the Secretary under this subpart.

**§ 41903. Duty to provide certain transportation of mail**

(a) AIR CARRIERS.—Subject to subsection (b) of this section, an air carrier authorized by its certificate to transport mail by aircraft in foreign air transportation or between places in Alaska shall—

(1) provide facilities and services necessary and adequate to provide that transportation; and

(2) transport mail between the places authorized in the certificate for transportation of mail when required, and under regulations prescribed, by the United States Postal Service.

(b) MAXIMUM MAIL LOAD.—The Secretary of Transportation may prescribe the maximum mail load for a schedule or for an aircraft or type of aircraft for the transportation of mail by aircraft in foreign air transportation or between places in Alaska. If the Postal Service tenders to an air carrier mail exceeding the maximum load for transportation by the carrier under a schedule designated or required to be established for the transportation of mail under section 41902(c) of this title, the carrier, as nearly in accordance with the schedule as the Secretary decides is possible, shall—

(1) provide facilities sufficient to transport the mail to the extent the Secretary decides the carrier reasonably is able to do so; and

(2) transport that mail.

**§ 41904. Noncitizens transporting mail to or in foreign countries**

When the United States Postal Service decides that it may be necessary to have a person not a citizen of the United States transport mail by aircraft to or in a foreign country, the Postal Service may make an arrangement with the person, without advertising, to provide the transportation.

**§ 41905. Regulating air carrier transportation of foreign mail**

An air carrier holding a certificate that authorizes foreign air transportation and transporting mail of a foreign country shall transport that mail under the control of, and subject to regulation by, the United States Government.

**§ 41906. Emergency mail transportation**

(a) CONTRACT AUTHORITY.—In an emergency caused by a flood, fire, or other disaster, the United States Postal Service may make a contract without advertising to transport mail by aircraft to or from a locality affected by the emergency when the available facilities of persons authorized to transport mail to or from the locality are inadequate to meet the require-

ments of the Postal Service during the emergency. The contract may be only for periods necessary to maintain mail service because of the inadequacy of the facilities. Payment for transportation provided under the contract shall be made at rates provided in the contract.

(b) TRANSPORTATION NOT AIR TRANSPORTATION.—Transportation provided under a contract made under subsection (a) of this section is not air transportation within the meaning of this part.

**§ 41907. Rates for foreign transportation of mail**

(a) LIMITATIONS.—When air transportation is provided between the United States and a foreign country both by aircraft owned or operated by an air carrier holding a certificate under chapter 411 of this title and by aircraft owned or operated by a foreign air carrier, the United States Postal Service may not pay to or for the account of the foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and the foreign country that the Postal Service believes will result (over a reasonable period determined by the Postal Service considering exchange fluctuations and other factors) in the foreign air carrier receiving a rate of compensation for transporting the mail that is higher than the rate—

(1) the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and the United States; or

(2) determined by the Postal Service to be comparable to the rate the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and an intermediate country on the route of the air carrier between the foreign country and the United States.

(b) CHANGES.—The Secretary of Transportation shall act expeditiously on proposed changes in rates for transporting mail by aircraft in foreign air transportation. When prescribing those rates, the Secretary shall consider—

(1) the rates paid for transportation of mail under the Universal Postal Union Convention as ratified by the United States Government;

(2) the rate-making elements used by the Universal Postal Union in prescribing its airmail rates; and

(3) the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for transporting United States mail and national origin mail of their own countries.

**§ 41908. Rates for transporting mail of foreign countries**

(a) RATE DETERMINATIONS.—The United States Postal Service shall determine the rates that an air carrier holding a certificate that authorizes foreign air transportation must charge a government of a foreign country or foreign postal administration for transporting mail of the foreign country. The Postal Service shall put those rates into effect under the postal convention regulating postal relations between the United States and the foreign country or as provided under this section.

(b) CHANGES.—The Postal Service may authorize an air carrier holding a certificate that authorizes foreign air transportation, under limitations the Postal Service prescribes, to change the rates the carrier charges a government of a foreign country or foreign postal administration for transporting mail of the foreign country in the foreign country or between the foreign country and another foreign country.

(c) COLLECTING COMPENSATION.—(1) When an air carrier holding a certificate that authorizes foreign air transportation transports mail of a foreign country—

(A) under an arrangement with a government of a foreign country or foreign postal administration made or approved under this section, the carrier must collect its compensation for the transportation from the foreign country under the arrangement; and

(B) without having an arrangement with a government of a foreign country or foreign postal administration consistent with this section, the compensation collected by the United States Government for the transportation shall be for the account of the air carrier.

(2) An air carrier holding a certificate that authorizes foreign air transportation is not entitled to receive compensation from both a government of a foreign country or foreign postal administration and the United States Government for transporting the same mail of the foreign country.

**§ 41909. Duty to oppose unreasonable Universal Postal Union rates**

The Secretary of State and the United States Postal Service shall—

(1) take appropriate action to ensure that the rates paid for transporting mail under the Universal Postal Union Convention are not higher than reasonable rates for transporting mail; and

(2) oppose any existing or proposed Universal Postal Union rate that is higher than a reasonable rate for transporting mail.

**§ 41910. Weighing mail**

The United States Postal Service may weigh mail transported by aircraft and make statistical and administrative computations necessary in the interest of mail service. When the Secretary of Transportation decides that addi-

1 tional or more frequent weighings of mail are advisable or necessary to  
 2 carry out this part, the Postal Service shall provide the weighings, but it  
 3 is not required to provide them for continuous periods of more than 30  
 4 days.

5 **§ 41911. Evidence of providing mail service**

6 When and in the form required by the United States Postal Service, an  
 7 air carrier transporting or handling—

8 (1) United States mail shall submit evidence, signed by an author-  
 9 ized official, that the transportation or handling has been provided; and

10 (2) mail of a foreign country shall submit evidence, signed by an au-  
 11 thorized official, of the amount of mail transported or handled and the  
 12 compensation payable and received for that transportation or handling.

13 **§ 41912. Effect on foreign postal arrangements**

14 This part does not—

15 (1) affect an arrangement made by the United States Government  
 16 with the postal administration of a foreign country related to the trans-  
 17 portation of mail by aircraft; or

18 (2) impair the authority of the United States Postal Service to make  
 19 such an arrangement.

20 **CHAPTER 421—LABOR-MANAGEMENT PROVISIONS**

SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

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21 SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

22 **§ 42101. Definitions**

23 (a) GENERAL.—In this subchapter—

24 (1) “eligible protected employee” means a protected employee who is  
 25 deprived of employment, or who is adversely affected related to com-  
 26 pensation, because of a qualifying dislocation.

27 (2) “major contraction” means a reduction (except as provided in  
 28 subsection (b) of this section) of at least 7.5 percent in the number  
 29 of full-time employees of an air carrier within a 12-month period, ex-  
 30 cept for employees deprived of employment because of a strike or whose  
 31 employment is ended for cause.

(3) “protected employee” means an individual who on October 24, 1978, was employed for at least 4 years by an air carrier that held a certificate under section 401 of the Federal Aviation Act of 1958, but does not include a director or officer of a corporation.

(4) “qualifying dislocation” means a bankruptcy or major contraction of an air carrier holding a certificate under section 41102 of this title when the Secretary of Transportation finds the bankruptcy or contraction occurred after December 31, 1978, and before January 1, 1989, the major cause of which was the change in regulatory structure provided by the Airline Deregulation Act of 1978.

(b) MAJOR CONTRACTION.—The Secretary may find a reduction of less than 7.5 percent of the number of full-time employees is part of a major contraction if the Secretary decides another reduction is likely to occur within the 12-month period in which the first reduction occurs that, when included with the first reduction, will result in a total reduction of more than 7.5 percent.

**§ 42102. Payments to eligible protected employees**

(a) AUTHORITY TO PAY AND APPLICATIONS FOR PAYMENTS.—Subject to amounts provided in an appropriation law, the Secretary of Labor shall make monthly assistance payments, moving expense payments, and reimbursement payments as provided under this section to an eligible protected employee whose employment is not ended for cause. The employee must apply to receive the payments and cooperate with the Secretary in finding other employment.

(b) NUMBER AND AMOUNT OF PAYMENTS.—(1) Subject to amounts provided in an appropriation law, an eligible protected employee shall receive 72 monthly assistance payments. However, an eligible protected employee deprived of employment may not receive a payment after obtaining other employment. For each class or craft of protected employees, the Secretary of Labor, after consulting with the Secretary of Transportation, shall prescribe by regulation guidelines for computing the amount of each monthly assistance payment to be made to a member of the class or craft and what percentage of salary that payment represents.

(2) The amount of a monthly payment payable under paragraph (1) of this subsection to an eligible protected employee shall be reduced—

(A) by unemployment compensation the employee receives; or

(B) if the employee does not accept reasonably comparable employment, to an amount the employee would be entitled to receive if the employee had accepted the employment.

(3) If accepting comparable employment to avoid a reduction in the monthly assistance payment under paragraph (2) of this subsection would

force an eligible protected employee to relocate, the employee may decide not to relocate. Instead of the payments provided under this section, the employee may receive the lesser of 3 payments or the maximum number of payments that remain to be paid under paragraph (1) of this subsection.

(c) MOVING EXPENSES AND REIMBURSEMENTS.—(1) Subject to amounts provided in an appropriation law, an eligible protected employee who relocates shall receive—

(A) reasonable moving expense payments to move the employee and the employee's immediate family; and

(B) reimbursement payments for a loss incurred in selling the employee's principal place of residence for less than fair market value or in cancelling a lease on, or contract to buy, the residence.

(2) The Secretary of Labor shall decide on the amount of the moving expenses and the fair market value of the residence.

#### **§ 42103. Duty to hire protected employees**

(a) REHIRING PROTECTED EMPLOYEES.—A protected employee of an air carrier regulated by the Secretary of Transportation who was furloughed or whose employment was ended by the carrier (except for cause) before October 23, 1988, is entitled to be the first employed in the occupational specialty of the employee, regardless of the employee's age, by any other air carrier holding a certificate under section 41102 of this title before October 24, 1978. However, the air carrier may recall its furloughed employees before hiring a protected employee of another air carrier regulated by the Secretary who was furloughed or whose employment was ended by the other carrier (except for cause) before October 23, 1988. An employee hired by an air carrier under this section retains seniority and recall rights with the air carrier that furloughed or ended the employment of the employee.

(b) DUTIES OF SECRETARY OF LABOR.—The Secretary of Labor—

(1) shall establish and publish periodically a list of jobs available with an air carrier holding a certificate under section 41102 of this title that includes necessary information and detail;

(2) shall assist eligible protected employees to find other employment;

(3) shall encourage negotiations between air carriers and representatives of employees on rehiring practices and seniority; and

(4) may require an air carrier to file with the Secretary information necessary to carry out this section.

#### **§ 42104. Congressional review of regulations**

(a) DEFINITION.—In this section, “legislative day” means a calendar day on which both Houses of Congress are in session.



(b) SUBMISSION TO CONGRESS.—The Secretary of Labor may not prescribe a regulation under this subchapter until 30 legislative days after the regulation is submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(c) EFFECTIVENESS OF REGULATIONS.—A proposed regulation under this subchapter shall be submitted to Congress and becomes effective only if, during the period of 60 legislative days after the regulation is submitted to Congress, either House does not pass a resolution disapproving the regulation. However, if Congress adopts a resolution approving the regulation during the 60-day period, the regulation is effective on that date.

#### **§ 42105. Airline Employees Protective Account**

The Department of Labor has an Airline Employees Protective Account consisting of amounts appropriated to it. An amount necessary to carry out this subchapter, including administrative expenses, may be appropriated to the Account annually.

#### **§ 42106. Ending effective date**

This subchapter is not effective after the last day the Secretary of Labor must make a payment under this subchapter.

### **SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS**

#### **§ 42111. Mutual aid agreements**

An air carrier that will receive payments from another air carrier under an agreement between the air carriers for the time the one air carrier is not providing foreign air transportation, or is providing reduced levels of foreign air transportation, because of a labor strike must file a true copy of the agreement with the Secretary of Transportation and have it approved by the Secretary under section 41309 of this title. Notwithstanding section 41309, the Secretary shall approve the agreement only if it provides that—

(1) the air carrier will receive payments of not more than 60 percent of direct operating expenses, including interest expenses, but not depreciation or amortization expenses;

(2) benefits may be paid for not more than 8 weeks, and may not be for losses incurred during the first 30 days of a strike; and

(3) on request of the striking employees, the dispute will be submitted to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et seq.).

#### **§ 42112. Labor requirements of air carriers**

(a) DEFINITIONS.—In this section—

(1) “copilot” means an employee whose duties include assisting or relieving the pilot in manipulating an aircraft and who is qualified to

1 serve as, and has in effect an airman certificate authorizing the em-  
 2 ployee to serve as, a copilot.

3 (2) “pilot” means an employee who is—

4 (A) responsible for manipulating or who manipulates the flight  
 5 controls of an aircraft when under way, including the landing and  
 6 takeoff of an aircraft; and

7 (B) qualified to serve as, and has in effect an airman certificate  
 8 authorizing the employee to serve as, a pilot.

9 (b) DUTIES OF AIR CARRIERS.—An air carrier shall—

10 (1) maintain rates of compensation, maximum hours, and other  
 11 working conditions and relations for its pilots and copilots who are pro-  
 12 viding interstate air transportation in the 48 contiguous States and the  
 13 District of Columbia to conform with decision number 83, May 10,  
 14 1934, National Labor Board, notwithstanding any limitation in that  
 15 decision on the period of its effectiveness;

16 (2) maintain rates of compensation for its pilots and copilots who are  
 17 providing foreign air transportation or air transportation only in one  
 18 territory or possession of the United States; and

19 (3) comply with title II of the Railway Labor Act (45 U.S.C. 181  
 20 et seq.) as long as it holds its certificate.

21 (c) MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual  
 22 rate under subsection (b)(2) of this section may not be less than the annual  
 23 rate required to be paid for comparable service to a pilot or copilot under  
 24 subsection (b)(1) of this section.

25 (d) COLLECTIVE BARGAINING.—This section does not prevent pilots or  
 26 copilots of an air carrier from obtaining by collective bargaining higher rates  
 27 of compensation or more favorable working conditions or relations.

#### 28 SUBPART III—SAFETY

### 29 **CHAPTER 441—REGISTRATION AND RECORDATION OF** 30 **AIRCRAFT**

Sec.

44101. Operation of aircraft.

44102. Registration requirements.

44103. Registration of aircraft.

44104. Registration of aircraft components and dealers' certificates of registration.

44105. Suspension and revocation of aircraft certificates.

44106. Revocation of aircraft certificates for controlled substance violations.

44107. Recordation of conveyances, leases, and security instruments.

44108. Validity of conveyances, leases, and security instruments.

44109. Reporting transfer of ownership.

44110. Information about aircraft ownership and rights.

44111. Modifications in registration and recordation system for aircraft not providing air  
 transportation.

44112. Limitation of liability.

**§ 44101. Operation of aircraft**

(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b) of this section, a person may operate an aircraft only when the aircraft is registered under section 44103 of this title.

(b) EXCEPTIONS.—A person may operate an aircraft in the United States that is not registered—

(1) when authorized under section 40103(d) or 41703 of this title;

(2) when it is an aircraft of the national defense forces of the United States and is identified in a way satisfactory to the Administrator of the Federal Aviation Administration; and

(3) for a reasonable period of time after a transfer of ownership, under regulations prescribed by the Administrator.

**§ 44102. Registration requirements**

(a) ELIGIBILITY.—An aircraft may be registered under section 44103 of this title only when the aircraft is—

(1) not registered under the laws of a foreign country and is owned by—

(A) a citizen of the United States;

(B) an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or

(C) a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States; or

(2) an aircraft of—

(A) the United States Government; or

(B) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of a State, territory, or possession.

(b) DUTY TO DEFINE CERTAIN TERM.—In carrying out subsection (a)(1)(C) of this section, the Secretary of Transportation shall define “based and primarily used in the United States”.

**§ 44103. Registration of aircraft**

(a) GENERAL.—(1) On application of the owner of an aircraft that meets the requirements of section 44102 of this title, the Administrator of the Federal Aviation Administration shall—

(A) register the aircraft; and

(B) issue a certificate of registration to its owner.

(2) The Administrator may prescribe the extent to which an aircraft owned by the holder of a dealer’s certificate of registration issued under section 44104(2) of this title also is registered under this section.

(b) CONTROLLED SUBSTANCE VIOLATIONS.—(1) The Administrator may not issue an owner's certificate of registration under subsection (a)(1) of this section to a person whose certificate is revoked under section 44106 of this title during the 5-year period beginning on the date of the revocation, except—

(A) as provided in section 44106(e)(2) of this title; or

(B) that the Administrator may issue the certificate to the person after the one-year period beginning on the date of the revocation if the Administrator decides that the aircraft otherwise meets the requirements of section 44102 of this title and that denial of a certificate for the 5-year period—

(i) would be excessive considering the nature of the offense or the act committed and the burden the denial places on the person;

or

(ii) would not be in the public interest.

(2) A decision of the Administrator under paragraph (1)(B)(i) or (ii) of this subsection is within the discretion of the Administrator. That decision or failure to make a decision is not subject to administrative or judicial review.

(c) CERTIFICATES AS EVIDENCE.—A certificate of registration issued under this section is—

(1) conclusive evidence of the nationality of an aircraft for international purposes, but not conclusive evidence in a proceeding under the laws of the United States; and

(2) not evidence of ownership of an aircraft in a proceeding in which ownership is or may be in issue.

(d) CERTIFICATES AVAILABLE FOR INSPECTION.—An operator of an aircraft shall make available for inspection a certificate of registration for the aircraft when requested by a United States Government, State, or local law enforcement officer.

#### **§44104. Registration of aircraft components and dealers' certificates of registration**

The Administrator of the Federal Aviation Administration may prescribe regulations—

(1) in the interest of safety for registering and identifying an aircraft engine, propeller, or appliance; and

(2) in the public interest for issuing, suspending, and revoking a dealer's certificate of registration under this chapter and for its use by a person manufacturing, distributing, or selling aircraft.

**§ 44105. Suspension and revocation of aircraft certificates**

The Administrator of the Federal Aviation Administration may suspend or revoke a certificate of registration issued under section 44103 of this title when the aircraft no longer meets the requirements of section 44102 of this title.

**§ 44106. Revocation of aircraft certificates for controlled substance violations**

(a) DEFINITION.—In this section, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATIONS.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking the certificate of registration for an aircraft issued to an owner under section 44103 of this title and any other certificate of registration that the owner of the aircraft holds under section 44103, if the Administrator finds that—

(A) the aircraft was used to carry out, or facilitate, an activity that is punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance); and

(B) the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in clause (A) of this paragraph.

(2) An aircraft owner that is not an individual is deemed to have permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection only if a majority of the individuals who control the owner of the aircraft or who are involved in forming the major policy of the owner permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A).

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator shall—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator bases the proposed action; and

(2) provide the holder of the certificate an opportunity to answer the charges and state why the certificate should not be revoked.

(d) APPEALS.—(1) A person whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and a hearing on the record. In con-

ducting the hearing, the Board is not bound by the findings of fact of the Administrator.

(2) When a person files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall dispose of the appeal not later than 60 days after notification by the Administrator under this paragraph.

(3) A person substantially affected by an order of the Board under this subsection may seek judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, a certificate of registration under this section on the basis of an activity described in subsection (b)(1)(A) of this section if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked a certificate of registration of a person under this section because of an activity described in subsection (b)(1)(A) of this section, the Administrator shall reissue a certificate to the person if the person—

(A) subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; and

(B) otherwise meets the requirements of section 44102 of this title.

#### **§ 44107. Recordation of conveyances, leases, and security instruments**

(a) ESTABLISHMENT OF SYSTEM.—The Administrator of the Federal Aviation Administration shall establish a system for recording—

(1) conveyances that affect an interest in civil aircraft of the United States;

(2) leases and instruments executed for security purposes, including conditional sales contracts, assignments, and amendments, that affect an interest in—

(A) a specifically identified aircraft engine having at least 750 rated takeoff horsepower or its equivalent;

(B) a specifically identified aircraft propeller capable of absorbing at least 750 rated takeoff shaft horsepower;

(C) an aircraft engine, propeller, or appliance maintained for installation or use in an aircraft, aircraft engine, or propeller, by or

for an air carrier holding a certificate issued under section 44705 of this title; and

(D) spare parts maintained by or for an air carrier holding a certificate issued under section 44705 of this title; and

(3) releases, cancellations, discharges, and satisfactions related to a conveyance, lease, or instrument recorded under clause (1) or (2) of this subsection.

(b) GENERAL DESCRIPTION REQUIRED.—A lease or instrument recorded under subsection (a)(2) (C) or (D) of this section only has to describe generally the engine, propeller, appliance, or spare part by type and designate its location.

(c) ACKNOWLEDGMENT.—Except as the Administrator otherwise may provide, a conveyance, lease, or instrument may be recorded under subsection (a) of this section only after it has been acknowledged before—

(1) a notary public; or

(2) another officer authorized under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States to acknowledge deeds.

(d) RECORDS AND INDEXES.—The Administrator shall—

(1) keep a record of the time and date that each conveyance, lease, and instrument is filed and recorded with the Administrator; and

(2) record each conveyance, lease, and instrument filed with the Administrator, in the order of their receipt, and index them by—

(A) the identifying description of the aircraft, aircraft engine, or propeller, or location specified in a lease or instrument recorded under subsection (a)(2) (C) or (D) of this section; and

(B) the names of the parties to each conveyance, lease, and instrument.

#### **§ 44108. Validity of conveyances, leases, and security instruments**

(a) VALIDITY BEFORE FILING.—Until a conveyance, lease, or instrument executed for security purposes that may be recorded under section 44107(a)(1) or (2) of this title is filed for recording, the conveyance, lease, or instrument is valid only against—

(1) the person making the conveyance, lease, or instrument;

(2) that person's heirs and devisees; and

(3) a person having actual notice of the conveyance, lease, or instrument.

(b) PERIOD OF VALIDITY.—When a conveyance, lease, or instrument is recorded under section 44107 of this title, the conveyance, lease, or instru-

ment is valid from the date of filing against all persons, without other recordation, except that—

(1) a lease or instrument recorded under section 44107(a)(2)(A) or (B) of this title is valid for a specifically identified engine or propeller without regard to a lease or instrument previously or subsequently recorded under section 44107(a)(2)(C) or (D); and

(2) a lease or instrument recorded under section 44107(a)(2)(C) or (D) of this title is valid only for items at the location designated in the lease or instrument.

(c) APPLICABLE LAWS.—(1) The validity of a conveyance, lease, or instrument that may be recorded under section 44107 of this title is subject to the laws of the State, the District of Columbia, or the territory or possession of the United States at which the conveyance, lease, or instrument is delivered, regardless of the place at which the subject of the conveyance, lease, or instrument is located or delivered. If the conveyance, lease, or instrument specifies the place at which delivery is intended, it is presumed that the conveyance, lease, or instrument was delivered at the specified place.

(2) This subsection does not take precedence over the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830).

(d) NONAPPLICATION.—This section does not apply to—

(1) a conveyance described in section 44107(a)(1) of this title that was made before August 22, 1938; or

(2) a lease or instrument described in section 44107(a)(2) of this title that was made before June 20, 1948.

#### **§ 44109. Reporting transfer of ownership**

(a) FILING NOTICES.—A person having an ownership interest in an aircraft for which a certificate of registration was issued under section 44103 of this title shall file a notice with the Secretary of the Treasury that the Secretary requires by regulation, not later than 15 days after a sale, conditional sale, transfer, or conveyance of the interest.

(b) EXEMPTIONS.—The Secretary—

(1) shall prescribe regulations that establish guidelines for exempting a person or class from subsection (a) of this section; and

(2) may exempt a person or class under the regulations.

#### **§ 44110. Information about aircraft ownership and rights**

The Administrator of the Federal Aviation Administration may provide by regulation for—

(1) endorsing information on each certificate of registration issued under section 44103 of this title and each certificate issued under sec-



tion 44704 of this title about ownership of the aircraft for which each certificate is issued; and

(2) recording transactions affecting an interest in, and for other records, proceedings, and details necessary to decide the rights of a party related to, a civil aircraft of the United States, aircraft engine, propeller, appliance, or spare part.

**§44111. Modifications in registration and recordation system for aircraft not providing air transportation**

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) AUTHORITY TO MAKE MODIFICATIONS.—The Administrator of the Federal Aviation Administration shall make modifications in the system for registering and recording aircraft necessary to make the system more effective in serving the needs of—

(1) buyers and sellers of aircraft;

(2) officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); and

(3) other users of the system.

(c) NATURE OF MODIFICATIONS.—Modifications made under subsection (b) of this section—

(1) may include a system of titling aircraft or registering all aircraft, even aircraft not operated;

(2) shall ensure positive, verifiable, and timely identification of the true owner; and

(3) shall address at least each of the following deficiencies in and abuses of the existing system:

(A) the registration of aircraft to fictitious persons.

(B) the use of false or nonexistent addresses by persons registering aircraft.

(C) the use by a person registering an aircraft of a post office box or “mail drop” as a return address to evade identification of the person’s address.

(D) the registration of aircraft to entities established to facilitate unlawful activities.

(E) the submission of names of individuals on applications for registration of aircraft that are not identifiable.

(F) the ability to make frequent legal changes in the registration markings assigned to aircraft.

(G) the use of false registration markings on aircraft.

(H) the illegal use of “reserved” registration markings on aircraft.

(I) the large number of aircraft classified as being in “self-reported status”.

(J) the lack of a system to ensure timely and adequate notice of the transfer of ownership of aircraft.

(K) the practice of allowing temporary operation and navigation of aircraft without the issuance of a certificate of registration.

(d) REGULATIONS.—(1) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out this section and provide a written explanation of how the regulations address each of the deficiencies and abuses described in subsection (c) of this section. In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(2) Regulations prescribed under this subsection shall require that—

(A) each individual listed in an application for registration of an aircraft provide with the application the individual’s driver’s license number; and

(B) each person (not an individual) listed in an application for registration of an aircraft provide with the application the person’s taxpayer identifying number.

#### **§ 44112. Limitation of liability**

(a) DEFINITIONS.—In this section—

(1) “lessor” means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller.

(2) “owner” means a person that owns a civil aircraft, aircraft engine, or propeller.

(3) “secured party” means a person having a security interest in, or security title to, a civil aircraft, aircraft engine, or propeller under a conditional sales contract, equipment trust contract, chattel or corporate mortgage, or similar instrument.

(b) LIABILITY.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

(1) the aircraft, engine, or propeller; or

(2) the flight of, or an object falling from, the aircraft, engine, or propeller.

## CHAPTER 443—INSURANCE

Sec.

44301. Definitions.

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44305. Insuring United States Government property.

44306. Premiums and limitations on coverage and claims.

44307. Revolving fund.

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### § 44301. Definitions

In this chapter—

(1) “American aircraft” means—

(A) a civil aircraft of the United States; and

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.

(2) “insurance carrier” means a person authorized to do aviation insurance business in a State, including a mutual or stock insurance company and a reciprocal insurance association.

### § 44302. General authority

(a) INSURANCE AND REINSURANCE.—(1) Subject to subsection (b) of this section and section 44305(a) of this title, the Secretary of Transportation may provide insurance and reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft—

(A) in foreign air commerce; or

(B) between at least 2 places, all of which are outside the United States.

(2) An aircraft may be insured or reinsured for not more than its reasonable value as determined by the Secretary. Insurance or reinsurance may be provided only when the Secretary decides that the insurance cannot be obtained on reasonable terms from an insurance carrier.

(b) PRESIDENTIAL APPROVAL.—The Secretary may provide insurance or reinsurance under subsection (a) of this section only with the approval of the President. The President may approve the insurance or reinsurance only after deciding that the continued operation of the American aircraft or for-

1    foreign-flag aircraft to be insured or reinsured is necessary to carry out the  
2    foreign policy of the United States Government.

3    (c) CONSULTATION.—The President may require the Secretary to consult  
4    with interested departments, agencies, and instrumentalities of the Govern-  
5    ment before providing insurance or reinsurance under this chapter.

6    (d) ADDITIONAL INSURANCE.—With the approval of the Secretary, a per-  
7    son having an insurable interest in an aircraft may insure with other under-  
8    writers in an amount that is more than the amount insured with the Sec-  
9    retary. However, the Secretary may not benefit from the additional insur-  
10    ance. This subsection does not prevent the Secretary from making contracts  
11    of coinsurance.

### 12    **§ 44303. Coverage**

13    The Secretary of Transportation may provide insurance and reinsurance  
14    authorized under section 44302 of this title for the following:

15       (1) an American aircraft or foreign-flag aircraft engaged in aircraft  
16       operations the President decides are necessary to carry out the foreign  
17       policy of the United States Government.

18       (2) property transported or to be transported on aircraft referred to  
19       in clause (1) of this section, including—

20           (A) shipments by express or registered mail;

21           (B) property owned by citizens or residents of the United  
22           States;

23           (C) property—

24               (i) imported to, or exported from, the United States; and

25               (ii) bought or sold by a citizen or resident of the United  
26               States under a contract putting the risk of loss or obligation  
27               to provide insurance against risk of loss on the citizen or resi-  
28               dent; and

29           (D) property transported between—

30               (i) a place in a State or the District of Columbia and a  
31               place in a territory or possession of the United States;

32               (ii) a place in a territory or possession of the United States  
33               and a place in another territory or possession of the United  
34               States; or

35               (iii) 2 places in the same territory or possession of the  
36               United States.

37       (3) the personal effects and baggage of officers and members of the  
38       crew of an aircraft referred to in clause (1) of this section and of other  
39       individuals employed or transported on that aircraft.

(4) officers and members of the crew of an aircraft referred to in clause (1) of this section and other individuals employed or transported on that aircraft against loss of life, injury, or detention.

(5) statutory or contractual obligations or other liabilities, customarily covered by insurance, of an aircraft referred to in clause (1) of this section or of the owner or operator of that aircraft.

#### **§ 44304. Reinsurance**

(a) GENERAL AUTHORITY.—To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may reinsure any part of the insurance provided by an insurance carrier. The Secretary may reinsure with, transfer to, or transfer back to, the carrier any insurance or reinsurance provided by the Secretary under this chapter.

(b) PREMIUM LEVELS.—The Secretary may provide reinsurance at premiums not less than, or obtain reinsurance at premiums not higher than, the premiums the Secretary establishes on similar risks or the premiums the insurance carrier charges for the insurance to be reinsured by the Secretary, whichever is most advantageous to the Secretary. However, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practice, except for payments by the carrier for the stimulation or solicitation of insurance business.

#### **§ 44305. Insuring United States Government property**

(a) GENERAL.—With the approval of the President, a department, agency, or instrumentality of the United States Government may obtain—

(1) insurance under this chapter, including insurance for risks from operating an aircraft in intrastate or interstate air commerce, but not including insurance on valuables subject to sections 1 and 2 of the Government Losses in Shipment Act (40 U.S.C. 721, 722); and

(2) insurance for risks arising from providing goods or services directly related to and necessary for operating an aircraft covered by insurance obtained under clause (1) of this subsection if the aircraft is operated—

(A) in carrying out a contract of the department, agency, or instrumentality; or

(B) to transport military forces or materiel on behalf of the United States under an agreement between the Government and the government of a foreign country.

(b) PREMIUM WAIVERS AND INDEMNIFICATION.—With the approval required under subsection (a) of this section, the Secretary of Transportation may provide the insurance without premium at the request of the Secretary

of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the Secretary of Transportation under this section.

**§ 44306. Premiums and limitations on coverage and claims**

(a) PREMIUMS BASED ON RISK.—To the extent practical, the premium charged for insurance or reinsurance under this chapter shall be based on consideration of the risk involved.

(b) TIME LIMITS.—The Secretary of Transportation may provide insurance and reinsurance under this chapter for a period of not more than 60 days. The period may be extended for additional periods of not more than 60 days each only if the President decides, before each additional period, that the continued operation of the aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) MAXIMUM INSURED AMOUNT.—The insurance policy on an aircraft insured or reinsured under this chapter shall specify a stated amount that is not more than the value of the aircraft, as determined by the Secretary. A claim under the policy may not be paid for more than that stated amount.

**§ 44307. Revolving fund**

(a) EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.—  
(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

(b) INVESTMENT.—On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

(c) EXCESS AMOUNTS.—The balance in the revolving fund in excess of an amount the Secretary of Transportation determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

(d) EXPENSES.—The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall

1 equal an amount determined by multiplying the average monthly balance of  
 2 appropriated amounts retained in the revolving fund by a percentage that  
 3 is at least the current average rate payable on marketable obligations of the  
 4 Government. The Secretary of the Treasury shall determine annually in ad-  
 5 vance the percentage applied.

6 **§ 44308. Administrative**

7 (a) COMMERCIAL PRACTICES.—The Secretary of Transportation may  
 8 carry out this chapter consistent with commercial practices of the aviation  
 9 insurance business.

10 (b) ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.—(1) The Sec-  
 11 retary may issue insurance policies to carry out this chapter. The Secretary  
 12 may prescribe the forms, amounts insured under the policies, and premiums  
 13 charged. The Secretary may change an amount of insurance or a premium  
 14 for an existing policy only with the consent of the insured.

15 (2) For a claim under insurance authorized by this chapter, the Secretary  
 16 may—

17 (A) settle and pay the claim made for or against the United States  
 18 Government; and

19 (B) pay the amount of a judgment entered against the Government.

20 (c) UNDERWRITING AGENT.—(1) The Secretary may, and when practical  
 21 shall, employ an insurance carrier or group of insurance carriers to act as  
 22 an underwriting agent. The Secretary may use the agent to adjust claims  
 23 under this chapter, but claims may be paid only when approved by the  
 24 Secretary.

25 (2) The Secretary may pay reasonable compensation to an underwriting  
 26 agent for servicing insurance the agent writes for the Secretary. Compensa-  
 27 tion may include payment for reasonable expenses incurred by the agent but  
 28 may not include a payment by the agent for stimulation or solicitation of  
 29 insurance business.

30 (3) Except as provided by this subsection, the Secretary may not pay a  
 31 insurance broker or other person acting in a similar capacity any consider-  
 32 ation for arranging insurance when the Secretary directly insures any part  
 33 of the risk.

34 (d) BUDGET.—The Secretary shall submit annually a budget program for  
 35 carrying out this chapter as provided for wholly owned Government corpora-  
 36 tions under chapter 91 of title 31.

37 (e) ACCOUNTS.—The Secretary shall maintain a set of accounts. The  
 38 Comptroller General shall audit those accounts under chapter 35 of title 31.  
 39 Notwithstanding chapter 35, the Comptroller General shall allow credit for  
 40 expenditures under this chapter made consistent with commercial practices

1 in the aviation insurance business when shown to be necessary because of  
2 the business activities authorized by this chapter.

3 **§ 44309. Civil actions**

4 (a) DISPUTED LOSSES.—A person may bring a civil action in a district  
5 court of the United States against the United States Government when a  
6 loss insured under this chapter is in dispute. A civil action involving the  
7 same matter (except the action authorized by this subsection) may not be  
8 brought against an agent, officer, or employee of the Government carrying  
9 out this chapter. To the extent applicable, the procedure in an action  
10 brought under section 1346(a)(2) of title 28 applies to an action under this  
11 subsection.

12 (b) VENUE AND JOINDER.—(1) A civil action under subsection (a) of this  
13 section may be brought in the judicial district for the District of Columbia  
14 or in the judicial district in which the plaintiff or the agent of the plaintiff  
15 resides if the plaintiff resides in the United States. If the plaintiff does not  
16 reside in the United States, the action may be brought in the judicial dis-  
17 trict for the District of Columbia or in the judicial district in which the At-  
18 torney General agrees to accept service.

19 (2) An interested person may be joined as a party to a civil action  
20 brought under subsection (a) of this section initially or on motion of either  
21 party to the action.

22 (c) TIME REQUIREMENTS.—When an insurance claim is made under this  
23 chapter, the period during which, under section 2401 of title 28, a civil ac-  
24 tion must be brought under subsection (a) of this section is suspended until  
25 60 days after the Secretary of Transportation denies the claim. The claim  
26 is deemed to be administratively denied if the Secretary does not act on the  
27 claim not later than 6 months after filing, unless the Secretary makes a dif-  
28 ferent agreement with the claimant when there is good cause for an agree-  
29 ment.

30 (d) INTERPLEADER.—(1) If the Secretary admits the Government owes  
31 money under an insurance claim under this chapter and there is a dispute  
32 about the person that is entitled to payment, the Government may bring  
33 a civil action of interpleader in a district court of the United States against  
34 the persons that may be entitled to payment. The action may be brought  
35 in the judicial district for the District of Columbia or in the judicial district  
36 in which any party resides.

37 (2) The district court may order a party not residing or found in the judi-  
38 cial district in which the action is brought to appear in a civil action under  
39 this subsection. The order shall be served in a reasonable manner decided  
40 by the district court. If the court decides an unknown person might assert



a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

**§ 44310. Ending effective date**

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after September 30, 1997.

**CHAPTER 445—FACILITIES, PERSONNEL, AND RESEARCH**

Sec.

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44515. Advanced training facilities for maintenance technicians for air carrier aircraft.

**§ 44501. Plans and policy**

(a) LONG RANGE PLANS AND POLICY REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall make long range plans and policy for the orderly development and use of the navigable airspace, and the orderly development and location of air navigation facilities, that will best meet the needs of, and serve the interests of, civil aeronautics and the national defense, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern.

(b) AIRWAY CAPITAL INVESTMENT PLAN.—The Administrator of the Federal Aviation Administration shall review, revise, and publish a national airways system plan, known as the Airway Capital Investment Plan, before the beginning of each fiscal year. The plan shall set forth—

(1) for a 10-year period, the research, engineering, and development programs and the facilities and equipment that the Administrator considers necessary for a system of airways, air traffic services, and navigation aids that will—

(A) meet the forecasted needs of civil aeronautics;

(B) meet the requirements that the Secretary of Defense establishes for the support of the national defense; and

- 1 (C) provide the highest degree of safety in air commerce;
- 2 (2) for the first and 2d years of the plan, detailed annual estimates
- 3 of—
- 4 (A) the number, type, location, and cost of acquiring, operating,
- 5 and maintaining required facilities and services;
- 6 (B) the cost of research, engineering, and development required
- 7 to improve safety, system capacity, and efficiency; and
- 8 (C) personnel levels required for the activities described in
- 9 subclauses (A) and (B) of this clause;
- 10 (3) for the 3d, 4th, and 5th years of the plan, estimates of the total
- 11 cost of each major program for the 3-year period, and additional major
- 12 research programs, acquisition of systems and facilities, and changes
- 13 in personnel levels that may be required to meet long range objectives
- 14 and that may have significant impact on future funding requirements;
- 15 and
- 16 (4) a 10-year investment plan that considers long range objectives
- 17 that the Administrator considers necessary to—
- 18 (A) ensure that safety is given the highest priority in providing
- 19 for a safe and efficient airway system; and
- 20 (B) meet the current and projected growth of aviation and the
- 21 requirements of interstate commerce, the United States Postal
- 22 Service, and the national defense.
- 23 (c) NATIONAL AVIATION RESEARCH PLAN.—(1) The Administrator of
- 24 the Federal Aviation Administration shall prepare and publish annually a
- 25 national aviation research plan and submit the plan to the Committee on
- 26 Commerce, Science, and Transportation of the Senate and the Committee
- 27 on Science, Space, and Technology of the House of Representatives. The
- 28 plan shall be submitted not later than the date of submission of the Presi-
- 29 dent's budget to Congress.
- 30 (2)(A) The plan shall describe, for a 15-year period, the research, engi-
- 31 neering, and development that the Administrator of the Federal Aviation
- 32 Administration considers necessary—
- 33 (i) to ensure the continued capacity, safety, and efficiency of aviation
- 34 in the United States, considering emerging technologies and forecasted
- 35 needs of civil aeronautics; and
- 36 (ii) to provide the highest degree of safety in air travel.
- 37 (B) The plan shall cover all research conducted under sections 40119,
- 38 44504, 44505, 44507, 44511–44513, and 44912 of this title and shall iden-
- 39 tify complementary and coordinated research efforts that the Administrator
- 40 of the National Aeronautics and Space Administration conducts with
- 41 amounts specifically appropriated to the Administration. For projects for

1 which the Administrator of the Federal Aviation Administration anticipates  
2 requesting an appropriation, the plan shall include—

3 (i) for the first 2 years of the plan, detailed annual estimates of the  
4 schedule, cost, and work-force levels for each research project, including  
5 a description of the scope and content of each major contract, grant,  
6 or interagency agreement;

7 (ii) for the 3d, 4th, and 5th years of the plan, estimates of the total  
8 cost of each major project and any additional major research projects  
9 that may be required to meet long-term objectives and that may have  
10 significant impact on future appropriations requirements;

11 (iii) for the 6th and subsequent years of the plan, the long-term ob-  
12 jectives the Administrator of the Federal Aviation Administration con-  
13 sider necessary to ensure that aviation safety will be given the highest  
14 priority; and

15 (iv) details of a program to disseminate to the private sector the re-  
16 sults of aviation research conducted by the Administrator of the Fed-  
17 eral Aviation Administration, including any new technologies developed.

18 (3) Subject to section 40119(b) of this title and regulations prescribed  
19 under section 40119(b), the Administrator of the Federal Aviation Adminis-  
20 tration shall submit to the committees named in paragraph (1) of this sub-  
21 section an annual report on the accomplishments of the research completed  
22 during the prior fiscal year. The report shall be submitted with the plan  
23 required under paragraph (1) and be organized to allow comparison with  
24 the plan in effect for the prior fiscal year.

25 **§ 44502. General facilities and personnel authority**

26 (a) GENERAL AUTHORITY.—(1) The Administrator of the Federal Avia-  
27 tion Administration may—

28 (A) acquire, establish, improve, operate, and maintain air navigation  
29 facilities; and

30 (B) provide facilities and personnel to regulate and protect air  
31 traffic.

32 (2) The cost of site preparation work associated with acquiring, establish-  
33 ing, or improving an air navigation facility under paragraph (1)(A) of this  
34 subsection shall be charged to amounts available for that purpose appro-  
35 priated under section 48101(a) of this title. The Secretary of Transpor-  
36 tation may make an agreement with an airport owner or sponsor (as defined  
37 in section 47102 of this title) so that the owner or sponsor will provide the  
38 work and be paid or reimbursed by the Secretary from the appropriated  
39 amounts.

40 (3) The Secretary of Transportation may authorize a department, agency,  
41 or instrumentality of the United States Government to carry out any duty

1 or power under this subsection with the consent of the head of the depart-  
2 ment, agency, or instrumentality.

3 (b) CERTIFICATION OF NECESSITY.—Except for Government money ex-  
4 pended under this part or for a military purpose, money may be expended  
5 to acquire, establish, construct, operate, repair, alter, or maintain an air  
6 navigation facility only if the Administrator of the Federal Aviation Admin-  
7 istration certifies in writing that the facility is reasonably necessary for use  
8 in air commerce or for the national defense. An interested person may apply  
9 for a certificate for a facility to be acquired, established, constructed, oper-  
10 ated, repaired, altered, or maintained by or for the person.

11 (c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—(1) To ensure  
12 that conformity with plans and policies for, and allocation of, airspace by  
13 the Administrator of the Federal Aviation Administration under section  
14 40103(b)(1) of this title, a military airport, military landing area, or missile  
15 or rocket site may be acquired, established, or constructed, or a runway may  
16 be altered substantially, only if the Administrator of the Federal Aviation  
17 Administration is given reasonable prior notice so that the Administrator of  
18 the Federal Aviation Administration may advise the appropriate committees  
19 of Congress and interested departments, agencies, and instrumentalities of  
20 the Government on the effect of the acquisition, establishment, construction,  
21 or alteration on the use of airspace by aircraft. A disagreement between the  
22 Administrator of the Federal Aviation Administration and the Secretary of  
23 Defense or the Administrator of the National Aeronautics and Space  
24 Administration may be appealed to the President for a final decision.

25 (2) To ensure conformity, an airport or landing area not involving the  
26 expenditure of Government money may be established or constructed, or a  
27 runway may be altered substantially, only if the Administrator of the Fed-  
28 eral Aviation Administration is given reasonable prior notice so that the Ad-  
29 ministrator may provide advice on the effects of the establishment, construc-  
30 tion, or alteration on the use of airspace by aircraft.

31 (d) PUBLIC USE AND EMERGENCY ASSISTANCE.—(1) The head of a de-  
32 partment, agency, or instrumentality of the Government having jurisdiction  
33 over an air navigation facility owned or operated by the Government may  
34 provide, under regulations the head of the department, agency, or instru-  
35 mentality prescribes, for public use of the facility.

36 (2) The head of a department, agency, or instrumentality of the Govern-  
37 ment having jurisdiction over an airport or emergency landing field owned  
38 or operated by the Government may provide, under regulations the head of  
39 the department, agency, or instrumentality prescribes, for assistance, and  
40 the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when  
41 necessary, because of an emergency, to allow the aircraft to continue to the

1 nearest airport operated by private enterprise. The head of the department,  
 2 agency, or instrumentality shall provide for the assistance and sale at the  
 3 prevailing local fair market value as determined by the head of the depart-  
 4 ment, agency, or instrumentality. An amount that the head decides is equal  
 5 to the cost of the assistance provided and the fuel, oil, equipment, and sup-  
 6 plies sold shall be credited to the appropriation from which the cost was  
 7 paid. The balance shall be credited to miscellaneous receipts.

8 (e) CONSENT OF CONGRESS.—Congress consents to a State making an  
 9 agreement, not in conflict with a law of the United States, with another  
 10 State to develop or operate an airport facility.

11 (f) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may  
 12 transfer, without consideration, to the Administrator of the Federal Aviation  
 13 Administration an instrument landing system (and associated approach  
 14 lighting equipment and runway visual range equipment) that conforms to  
 15 performance specifications of the Administrator if a Government airport aid  
 16 program, airport development aid program, or airport improvement project  
 17 grant was used to assist in purchasing the system. The Administrator shall  
 18 accept the system and operate and maintain it under criteria of the Admin-  
 19 istrator.

#### 20 **§ 44503. Reducing nonessential expenditures**

21 The Secretary of Transportation shall attempt to reduce the capital, oper-  
 22 ating, maintenance, and administrative costs of the national airport and air-  
 23 way system to the maximum extent practicable consistent with the highest  
 24 degree of aviation safety. At least annually, the Secretary shall consult with  
 25 and consider the recommendations of users of the system on ways to reduce  
 26 nonessential expenditures of the United States Government for aviation.  
 27 The Secretary shall give particular attention to a recommendation that may  
 28 reduce, with no adverse effect on safety, future personnel requirements and  
 29 costs to the Government required to be recovered from user charges.

#### 30 **§ 44504. Improved aircraft, aircraft engines, propellers, and** 31 **appliances**

32 (a) DEVELOPMENTAL WORK AND SERVICE TESTING.—The Administrator  
 33 of the Federal Aviation Administration may conduct or supervise devel-  
 34 opmental work and service testing to improve aircraft, aircraft engines, pro-  
 35 pellers, and appliances.

36 (b) RESEARCH.—The Administrator shall conduct or supervise research—

37 (1) to develop technologies and analyze information to predict the ef-  
 38 fects of aircraft design, maintenance, testing, wear, and fatigue on the  
 39 life of aircraft and air safety;

(2) to develop methods of analyzing and improving aircraft maintenance technology and practices, including nondestructive evaluation of aircraft structures;

(3) to assess the fire and smoke resistance of aircraft material;

(4) to develop improved fire and smoke resistant material for aircraft interiors;

(5) to develop and improve fire and smoke containment systems for inflight aircraft fires;

(6) to develop advanced aircraft fuels with low flammability and technologies that will contain aircraft fuels to minimize post-crash fire hazards; and

(7) to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft.

(c) AUTHORITY TO BUY ITEMS OFFERING SPECIAL ADVANTAGES.—In carrying out this section, the Administrator, by negotiation or otherwise, may buy or exchange experimental aircraft, aircraft engines, propellers, and appliances that the Administrator decides may offer special advantages to aeronautics.

#### **§ 44505. Systems, procedures, facilities, and devices**

(a) GENERAL REQUIREMENTS.—(1) The Administrator of the Federal Aviation Administration shall—

(A) develop, alter, test, and evaluate systems, procedures, facilities, and devices, and define their performance characteristics, to meet the needs for safe and efficient navigation and traffic control of civil and military aviation, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern; and

(B) select systems, procedures, facilities, and devices that will best serve those needs and promote maximum coordination of air traffic control and air defense systems.

(2) The Administrator may make contracts to carry out this subsection without regard to section 3324(a) and (b) of title 31.

(3) When a substantial question exists under paragraph (1) of this subsection about whether a matter is of primary concern to the armed forces, the Administrator shall decide whether the Administrator or the Secretary of the appropriate military department has responsibility. The Administrator shall be given technical information related to each research and development project of the armed forces that potentially applies to, or potentially conflicts with, the common system to ensure that potential application

1 to the common system is considered properly and that potential conflicts  
2 with the system are eliminated.

3 (b) RESEARCH ON HUMAN FACTORS AND SIMULATION MODELS.—The  
4 Administrator shall conduct or supervise research—

5 (1) to develop a better understanding of the relationship between  
6 human factors and aviation accidents and between human factors and  
7 air safety;

8 (2) to enhance air traffic controller, mechanic, and flight crew per-  
9 formance;

10 (3) to develop a human-factor analysis of the hazards associated with  
11 new technologies to be used by air traffic controllers, mechanics, and  
12 flight crews;

13 (4) to identify innovative and effective corrective measures for  
14 human errors that adversely affect air safety; and

15 (5) to develop dynamic simulation models of the air traffic control  
16 system and airport design and operating procedures that will provide  
17 analytical technology—

18 (A) to predict airport and air traffic control safety and capacity  
19 problems;

20 (B) to evaluate planned research projects; and

21 (C) to test proposed revisions in airport and air traffic control  
22 operations programs.

23 (c) RESEARCH ON DEVELOPING AND MAINTAINING A SAFE AND EFFI-  
24 CIENT SYSTEM.—The Administrator shall conduct or supervise research  
25 on—

26 (1) airspace and airport planning and design;

27 (2) airport capacity enhancement techniques;

28 (3) human performance in the air transportation environment;

29 (4) aviation safety and security;

30 (5) the supply of trained air transportation personnel, including pi-  
31 lots and mechanics; and

32 (6) other aviation issues related to developing and maintaining a safe  
33 and efficient air transportation system.

#### 34 **§ 44506. Air traffic controllers**

35 (a) RESEARCH ON EFFECT OF AUTOMATION ON PERFORMANCE.—To de-  
36 velop the means necessary to establish appropriate selection criteria and  
37 training methodologies for the next generation of air traffic controllers, the  
38 Administrator of the Federal Aviation Administration shall conduct research  
39 to study the effect of automation on the performance of the next generation  
40 of air traffic controllers and the air traffic control system. The research  
41 shall include investigating—

(1) methods for improving and accelerating future air traffic controller training through the application of advanced training techniques, including the use of simulation technology;

(2) the role of automation in the air traffic control system and its physical and psychological effects on air traffic controllers;

(3) the attributes and aptitudes needed to function well in a highly automated air traffic control system and the development of appropriate testing methods for identifying individuals with those attributes and aptitudes;

(4) innovative methods for training potential air traffic controllers to enhance the benefits of automation and maximize the effectiveness of the air traffic control system; and

(5) new technologies and procedures for exploiting automated communication systems, including Mode S Transponders, to improve information transfers between air traffic controllers and aircraft pilots.

(b) RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.—The Administrators of the Federal Aviation Administration and National Aeronautics and Space Administration may make an agreement for the use of the National Aeronautics and Space Administration's unique human factor facilities and expertise in conducting research activities to study the human factor aspects of the highly automated environment for the next generation of air traffic controllers. The research activities shall include investigating—

(1) human perceptual capabilities and the effect of computer-aided decision making on the workload and performance of air traffic controllers;

(2) information management techniques for advanced air traffic control display systems; and

(3) air traffic controller workload and performance measures, including the development of predictive models.

(c) COLLEGIATE TRAINING INITIATIVE.—(1) The Administrator of the Federal Aviation Administration may maintain the Collegiate Training Initiative program by making new agreements and continuing existing agreements with institutions of higher education (as defined by the Administrator) under which the institutions prepare students for the position of air traffic controller with the Department of Transportation (as defined in section 2109 of title 5). The Administrator may establish standards for the entry of institutions into the program and for their continued participation.

(2)(A) The Administrator of the Federal Aviation Administration may appoint an individual who has successfully completed a course of training in a program described in paragraph (1) of this subsection to the position of air traffic controller noncompetitively in the excepted service (as defined in



section 2103 of title 5). An individual appointed under this paragraph serves at the pleasure of the Administrator, subject to section 7511 of title 5. However, an appointment under this paragraph may be converted from one in the excepted service to a career conditional or career appointment in the competitive civil service (as defined in section 2102 of title 5) when the individual achieves full performance level air traffic controller status, as decided by the Administrator.

(B) The authority under subparagraph (A) of this paragraph to make appointments in the excepted service expires on October 6, 1997, except that the Administrator of the Federal Aviation Administration may extend the authority for one or more successive one-year periods.

(d) STAFFING REPORT.—The Administrator of the Federal Aviation Administration shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(1) the staffing standards used to determine the number of air traffic controllers needed to operate the air traffic control system of the United States;

(2) a 3-year projection of the number of controllers needed to be employed to operate the system to meet the standards; and

(3) a detailed plan for employing the controllers, including projected budget requests.

#### **§ 44507. Civil aeromedical research**

The Civil Aeromedical Institute established by section 106(j) of this title may—

(1) conduct civil aeromedical research, including research related to—

(A) the protection and survival of aircraft occupants;

(B) medical accident investigation and airman medical certification;

(C) toxicology and the effects of drugs on human performance;

(D) the impact of disease and disability on human performance;

(E) vision and its relationship to human performance and equipment design;

(F) human factors of flight crews, air traffic controllers, mechanics, inspectors, airway facility technicians, and other individuals involved in operating and maintaining aircraft and air traffic control equipment; and

(G) agency work force optimization, including training, equipment design, reduction of errors, and identification of candidate tasks for automation;

(2) make comments to the Administrator of the Federal Aviation Administration on human factors aspects of proposed air safety regulations;

(3) make comments to the Administrator on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

(4) advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between the Administration and the National Aeronautics and Space Administration, other departments, agencies, and instrumentalities of the United States Government, industry, and governments of foreign countries; and

(5) provide medical consultation services to the Administrator about medical certification of airmen.

**§ 44508. Research advisory committee**

(a) ESTABLISHMENT AND DUTIES.—(1) There is a research advisory committee in the Federal Aviation Administration. The committee shall—

(A) provide advice and recommendations to the Administrator of the Federal Aviation Administration about needs, objectives, plans, approaches, content, and accomplishments of the aviation research program carried out under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title;

(B) assist in ensuring that the research is coordinated with similar research being conducted outside the Administration; and

(C) review the operations of the regional centers of air transportation excellence established under section 44513 of this title.

(2) The Administrator may establish subordinate committees to provide advice on specific areas of research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title.

(b) MEMBERS, CHAIRMAN, PAY, AND EXPENSES.—(1) The committee is composed of not more than 30 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. In appointing members of the committee, the Administrator shall ensure that the regional centers of air transportation excellence, universities, corporations, associations, consumers, and other departments, agencies, and instrumentalities of the United States Government are represented.

(2) The Administrator shall designate the chairman of the committee.

(3) A member of the committee serves without pay. However, the Administrator may allow a member, when attending meetings of the committee or

1 a subordinate committee, travel or transportation expenses as authorized  
2 under section 5703 of title 5.

3 (c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The Administrator  
4 shall provide support staff for the committee. On request of the committee,  
5 the Administrator shall provide information, administrative services, and  
6 supplies that the Administrator considers necessary for the committee to  
7 carry out its duties and powers.

8 (d) NONAPPLICATION.—Section 14 of the Federal Advisory Committee  
9 Act (5 App. U.S.C.) does not apply to the committee.

10 (e) USE AND LIMITATION OF AMOUNTS.—(1) Not more than .1 percent  
11 of the amounts made available to conduct research under sections 40119,  
12 44504, 44505, 44507, 44511–44513, and 44912 of this title may be used  
13 by the Administrator to carry out this section.

14 (2) A limitation on amounts available for obligation by or for the commit-  
15 tee does not apply to amounts made available to carry out this section.

#### 16 **§ 44509. Demonstration projects**

17 The Secretary of Transportation may carry out under this chapter dem-  
18 onstration projects that the Secretary considers necessary for research and  
19 development activities under this chapter.

#### 20 **§ 44510. Airway science curriculum grants**

21 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation  
22 Administration may make competitive grant agreements with institutions of  
23 higher education having airway science curricula for the United States Gov-  
24 ernment's share of the allowable direct costs of the following categories of  
25 items to the extent that the items are in support of airway science curricula:

26 (1) the construction, purchase, or lease with an option to purchase,  
27 of buildings and associated facilities.

28 (2) instructional material and equipment.

29 (b) COST GUIDELINES.—The Administrator shall establish guidelines to  
30 determine the direct costs allowable under a grant to be made under this  
31 section. The Government's share of the allowable cost of a project assisted  
32 by a grant under this section may not be more than 65 percent.

#### 33 **§ 44511. Aviation research grants**

34 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation  
35 Administration may make grants to institutions of higher education and  
36 nonprofit research organizations to conduct aviation research in areas the  
37 Administrator considers necessary for the long-term growth of civil aviation.

38 (b) APPLICATIONS.—An institution of higher education or nonprofit re-  
39 search organization interested in receiving a grant under this section may  
40 submit an application to the Administrator. The application must be in the  
41 form and contain the information the Administrator requires.

(c) SOLICITATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, review, and evaluation process that ensures—

- (1) providing grants under this section for proposals having adequate merit and relevancy to the mission of the Administration;
- (2) a fair geographical distribution of grants under this section; and
- (3) the inclusion of historically black institutions of higher education and other minority nonprofit research organizations for grant consideration under this section.

(d) RECORDS.—Each person receiving a grant under this section shall maintain records that the Administrator requires as being necessary to facilitate an effective audit and evaluation of the use of money provided under the grant.

(e) ANNUAL REPORT.—The Administrator shall submit an annual report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on carrying out this section.

#### **§ 44512. Catastrophic failure prevention research grants**

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations—

- (1) to conduct aviation research related to the development of technologies and methods to assess the risk of, and prevent, defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft; and
- (2) to establish centers of excellence for continuing the research.

(b) SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures providing grants under this section for proposals having adequate merit and relevancy to the research described in subsection (a) of this section.

#### **§ 44513. Regional centers of air transportation excellence**

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education to establish and operate regional centers of air transportation excellence. The locations shall be distributed in a geographically fair way.

(b) RESPONSIBILITIES.—(1) The responsibilities of each center established under this section shall include—

- (A) conducting research on—
  - (i) airspace and airport planning and design;

- 1 (ii) airport capacity enhancement techniques;
- 2 (iii) human performance in the air transportation environment;
- 3 (iv) aviation safety and security;
- 4 (v) the supply of trained air transportation personnel, including
- 5 pilots and mechanics; and
- 6 (vi) other aviation issues related to developing and maintaining
- 7 a safe and efficient air transportation system; and
- 8 (B) interpreting, publishing, and disseminating the results of the re-
- 9 search.

10 (2) In conducting research described in paragraph (1)(A) of this sub-

11 section, each center may make contracts with nonprofit research organiza-

12 tions and other appropriate persons.

13 (c) APPLICATIONS.—An institution of higher education interested in re-

14 ceiving a grant under this section may submit an application to the Admin-

15 istrator. The application must be in the form and contain the information

16 that the Administrator requires by regulation.

17 (d) SELECTION CRITERIA.—The Administrator shall select recipients of

18 grants under this section on the basis of the following criteria:

19 (1) The extent to which the needs of the State in which the applicant

20 is located are representative of the needs of the region for improved

21 air transportation services and facilities.

22 (2) The demonstrated research and extension resources available to

23 the applicant to carry out this section.

24 (3) The ability of the applicant to provide leadership in making na-

25 tional and regional contributions to the solution of both long-range and

26 immediate air transportation problems.

27 (4) The extent to which the applicant has an established air trans-

28 portation program.

29 (5) The demonstrated ability of the applicant to disseminate results

30 of air transportation research and educational programs through a

31 statewide or regionwide continuing education program.

32 (6) The projects the applicant proposes to carry out under the grant.

33 (e) EXPENDITURE AGREEMENTS.—A grant may be made under this sec-

34 tion in a fiscal year only if the recipient makes an agreement with the Ad-

35 ministrator that the Administrator requires to ensure that the recipient will

36 maintain its total expenditures from all other sources for establishing and

37 operating the center and related research activities at a level at least equal

38 to the average level of those expenditures in the 2 fiscal years of the recipi-

39 ent occurring immediately before November 5, 1990.

40 (f) GOVERNMENT'S SHARE OF COSTS.—The United States Government's

41 share of a grant under this section is 50 percent of the costs of establishing

1 and operating the center and related research activities that the grant recip-  
2 ient carries out.

3 (g) ALLOCATING AMOUNTS.—The Administrator shall allocate amounts  
4 made available to carry out this section in a geographically fair way.

5 **§44514. Flight service stations**

6 (a) HOURS OF OPERATION.—(1) The Secretary of Transportation may  
7 close, or reduce the hours of operation of, a flight service station in an area  
8 only if the service provided in the area after the closing or during the hours  
9 the station is not in operation is provided by an automated flight service  
10 station with at least model 1 equipment.

11 (2) The Secretary shall reopen a flight service station closed after March  
12 24, 1987, but before July 15, 1987, as soon as practicable if the service  
13 in the area in which the station is located has not been provided since the  
14 closing by an automatic flight service station with at least model 1 equip-  
15 ment. The hours of operation for the reopened station shall be the same  
16 as were the hours of operation for the station on March 25, 1987. After  
17 reopening the station, the Secretary may close, or reduce the hours of oper-  
18 ation of, the station only as provided in paragraph (1) of this subsection.

19 (b) MANNED AUXILIARY STATIONS.—The Secretary and the Adminis-  
20 trator of the Federal Aviation Administration shall establish a system of  
21 manned auxiliary flight service stations. The manned auxiliary flight service  
22 stations shall supplement the services of the planned consolidation to 61  
23 automated flight service stations under the flight service station moderniza-  
24 tion program. A manned auxiliary flight service station shall be located in  
25 an area of unique weather or operational conditions that are critical to the  
26 safety of flight.

27 **§44515. Advanced training facilities for maintenance tech-**  
28 **nicians for air carrier aircraft**

29 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation  
30 Administration may make grants to not more than 4 vocational technical  
31 educational institutions to acquire or construct facilities to be used for the  
32 advanced training of maintenance technicians for air carrier aircraft.

33 (b) ELIGIBILITY.—The Administrator may make a grant under this sec-  
34 tion to a vocational technical educational institution only if the institution  
35 has a training curriculum that prepares aircraft maintenance technicians  
36 who hold airframe and power plant certificates under subpart D of part 65  
37 of title 14, Code of Federal Regulations, to maintain, without direct super-  
38 vision, air carrier aircraft.

39 (c) LIMITATION.—A vocational technical educational institution may not  
40 receive more than a total of \$5,000,000 in grants under this section.

## CHAPTER 447—SAFETY REGULATION

Sec.

- 44701. General requirements.
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- 44706. Airport operating certificates.
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### § 44701. General requirements

(a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) PRESCRIBING MINIMUM SAFETY STANDARDS.—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) REDUCING AND ELIMINATING ACCIDENTS.—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.—When prescribing a regulation or standard under subsection (a) or (b) of this section or section 44702–44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) EXEMPTIONS.—The Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or section 44702–44716 of this title if the Administrator finds the exemption is in the public interest.

#### **§ 44702. Issuance of certificates**

(a) GENERAL AUTHORITY AND APPLICATIONS.—The Administrator of the Federal Aviation Administration may issue airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates under this chapter. An application for a certificate must—

(1) be under oath when the Administrator requires; and

(2) be in the form, contain information, and be filed and served in the way the Administrator prescribes.

(b) CONSIDERATIONS.—When issuing a certificate under this chapter, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and



1 (B) differences between air transportation and other air com-  
 2 merce; and

3 (2) classify a certificate according to the differences between air  
 4 transportation and other air commerce.

5 (c) PRIOR CERTIFICATION.—The Administrator may authorize an air-  
 6 craft, aircraft engine, propeller, or appliance for which a certificate has been  
 7 issued authorizing the use of the aircraft, aircraft engine, propeller, or ap-  
 8 pliance in air transportation to be used in air commerce without another  
 9 certificate being issued.

10 (d) DELEGATION.—(1) Subject to regulations, supervision, and review the  
 11 Administrator may prescribe, the Administrator may delegate to a qualified  
 12 private person, or to an employee under the supervision of that person, a  
 13 matter related to—

14 (A) the examination, testing, and inspection necessary to issue a cer-  
 15 tificate under this chapter; and

16 (B) issuing the certificate.

17 (2) The Administrator may rescind a delegation under this subsection at  
 18 any time for any reason the Administrator considers appropriate.

19 (3) A person affected by an action of a private person under this sub-  
 20 section may apply for reconsideration of the action by the Administrator.  
 21 On the Administrator's own initiative, the Administrator may reconsider the  
 22 action of a private person at any time. If the Administrator decides on re-  
 23 consideration that the action is unreasonable or unwarranted, the Adminis-  
 24 trator shall change, modify, or reverse the action. If the Administrator de-  
 25 cides the action is warranted, the Administrator shall affirm the action.

## 26 **§ 44703. Airman certificates**

27 (a) GENERAL.—The Administrator of the Federal Aviation Administra-  
 28 tion shall issue an airman certificate to an individual when the Adminis-  
 29 trator finds, after investigation, that the individual is qualified for, and  
 30 physically able to perform the duties related to, the position to be authorized  
 31 by the certificate.

32 (b) CONTENTS.—(1) An airman certificate shall—

33 (A) be numbered and recorded by the Administrator of the Federal  
 34 Aviation Administration;

35 (B) contain the name, address, and description of the individual to  
 36 whom the certificate is issued;

37 (C) contain terms the Administrator decides are necessary to ensure  
 38 safety in air commerce, including terms on the duration of the certifi-  
 39 cate, periodic or special examinations, and tests of physical fitness;

40 (D) specify the capacity in which the holder of the certificate may  
 41 serve as an airman with respect to an aircraft; and

1 (E) designate the class the certificate covers.

2 (2) A certificate issued to a pilot serving in scheduled air transportation  
3 shall have the designation “airline transport pilot” of the appropriate class.

4 (c) APPEALS.—(1) An individual whose application for the issuance or re-  
5 newal of an airman certificate has been denied may appeal the denial to the  
6 National Transportation Safety Board, except if the individual holds a cer-  
7 tificate that—

8 (A) is suspended at the time of denial; or

9 (B) was revoked within one year from the date of the denial.

10 (2) The Board shall conduct a hearing on the appeal at a place conven-  
11 ient to the place of residence or employment of the applicant. The Board  
12 is not bound by findings of fact of the Administrator of the Federal Avia-  
13 tion Administration but is bound by all validly adopted interpretations of  
14 laws and regulations the Administrator carries out unless the Board finds  
15 an interpretation is arbitrary, capricious, or otherwise not according to law.  
16 At the end of the hearing, the Board shall decide whether the individual  
17 meets the applicable regulations and standards. The Administrator is bound  
18 by that decision.

19 (d) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Fed-  
20 eral Aviation Administration may—

21 (1) restrict or prohibit issuing an airman certificate to an alien; or

22 (2) make issuing the certificate to an alien dependent on a reciprocal  
23 agreement with the government of a foreign country.

24 (e) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the  
25 Federal Aviation Administration may not issue an airman certificate to an  
26 individual whose certificate is revoked under section 44710 of this title ex-  
27 cept—

28 (1) when the Administrator decides that issuing the certificate will  
29 facilitate law enforcement efforts; and

30 (2) as provided in section 44710(e)(2) of this title.

31 (f) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal  
32 Aviation Administration shall make modifications in the system for issuing  
33 airman certificates necessary to make the system more effective in serving  
34 the needs of pilots and officials responsible for enforcing laws related to the  
35 regulation of controlled substances (as defined in section 102 of the Com-  
36 prehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.  
37 802)). The modifications shall ensure positive and verifiable identification  
38 of each individual applying for or holding a certificate and shall address at  
39 least each of the following deficiencies in, and abuses of, the existing sys-  
40 tem:

1 (A) the use of fictitious names and addresses by applicants for those  
2 certificates.

3 (B) the use of stolen or fraudulent identification in applying for  
4 those certificates.

5 (C) the use by an applicant of a post office box or “mail drop” as  
6 a return address to evade identification of the applicant’s address.

7 (D) the use of counterfeit and stolen airman certificates by pilots.

8 (E) the absence of information about physical characteristics of hold-  
9 ers of those certificates.

10 (2) The Administrator of the Federal Aviation Administration shall pre-  
11 scribe regulations to carry out paragraph (1) of this subsection and provide  
12 a written explanation of how the regulations address each of the deficiencies  
13 and abuses described in paragraph (1). In prescribing the regulations, the  
14 Administrator of the Federal Aviation Administration shall consult with the  
15 Administrator of Drug Enforcement, the Commissioner of Customs, other  
16 law enforcement officials of the United States Government, representatives  
17 of State and local law enforcement officials, representatives of the general  
18 aviation aircraft industry, representatives of users of general aviation air-  
19 craft, and other interested persons.

20 **§ 44704. Type certificates, production certificates, and air-**  
21 **worthiness certificates**

22 (a) TYPE CERTIFICATES.—(1) The Administrator of the Federal Aviation  
23 Administration shall issue a type certificate for an aircraft, aircraft engine,  
24 or propeller, or for an appliance specified under paragraph (2)(A) of this  
25 subsection when the Administrator finds that the aircraft, aircraft engine,  
26 propeller, or appliance is properly designed and manufactured, performs  
27 properly, and meets the regulations and minimum standards prescribed  
28 under section 44701(a) of this title. On receiving an application for a type  
29 certificate, the Administrator shall investigate the application and may con-  
30 duct a hearing. The Administrator shall make, or require the applicant to  
31 make, tests the Administrator considers necessary in the interest of safety.

32 (2) The Administrator may—

33 (A) specify in regulations those appliances that reasonably require a  
34 type certificate in the interest of safety;

35 (B) include in a type certificate terms required in the interest of  
36 safety; and

37 (C) record on the certificate a numerical specification of the essential  
38 factors related to the performance of the aircraft, aircraft engine, or  
39 propeller for which the certificate is issued.

40 (b) PRODUCTION CERTIFICATES.—The Administrator shall issue a pro-  
41 duction certificate authorizing the production of a duplicate of an aircraft,

aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The Administrator may include in a production certificate terms required in the interest of safety.

(c) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an aircraft may apply to the Administrator for an airworthiness certificate for the aircraft. The Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The Administrator shall register each airworthiness certificate and may include appropriate information in the certificate. The certificate number or other individual designation the Administrator requires shall be displayed on the aircraft. The Administrator may include in an airworthiness certificate terms required in the interest of safety.

(2) A person applying for the issuance or renewal of an airworthiness certificate for an aircraft for which ownership has not been recorded under section 44107 or 44110 of this title must submit with the application information related to the ownership of the aircraft the Administrator decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

#### **§ 44705. Air carrier operating certificates**

The Administrator of the Federal Aviation Administration shall issue an air carrier operating certificate to a person desiring to operate as an air carrier when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part. An air carrier operating certificate shall—

(1) contain terms necessary to ensure safety in air transportation;

and

(2) specify the places to and from which, and the airways of the United States over which, a person may operate as an air carrier.

#### **§ 44706. Airport operating certificates**

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport—

(1) that serves an air carrier operating aircraft designed for at least 31 passenger seats;

(2) that the Administrator requires to have a certificate; and

1 (3) when the Administrator finds, after investigation, that the person  
 2 properly and adequately is equipped and able to operate safely under  
 3 this part and regulations and standards prescribed under this part.

4 (b) TERMS.—An airport operating certificate issued under this section  
 5 shall contain terms necessary to ensure safety in air transportation. Unless  
 6 the Administrator decides that it is not in the public interest, the terms  
 7 shall include conditions related to—

8 (1) operating and maintaining adequate safety equipment, including  
 9 firefighting and rescue equipment capable of rapid access to any part  
 10 of the airport used for landing, takeoff, or surface maneuvering of an  
 11 aircraft; and

12 (2) friction treatment for primary and secondary runways that the  
 13 Secretary of Transportation decides is necessary.

14 (c) EXEMPTIONS.—The Administrator may exempt from the requirements  
 15 of this section, related to firefighting and rescue equipment, an operator of  
 16 an airport described in subsection (a) of this section having less than .25  
 17 percent of the total number of passenger boardings each year at all airports  
 18 described in subsection (a) when the Administrator decides that the require-  
 19 ments are or would be unreasonably costly, burdensome, or impractical.

20 **§ 44707. Examining and rating air agencies**

21 The Administrator of the Federal Aviation Administration may examine  
 22 and rate the following air agencies:

23 (1) civilian schools giving instruction in flying or repairing, altering,  
 24 and maintaining aircraft, aircraft engines, propellers, and appliances,  
 25 on the adequacy of instruction, the suitability and airworthiness of  
 26 equipment, and the competency of instructors.

27 (2) repair stations and shops that repair, alter, and maintain air-  
 28 craft, aircraft engines, propellers, and appliances, on the adequacy and  
 29 suitability of the equipment, facilities, and materials for, and methods  
 30 of, repair and overhaul, and the competency of the individuals doing  
 31 the work or giving instruction in the work.

32 (3) other air agencies the Administrator decides are necessary in the  
 33 public interest.

34 **§ 44708. Inspecting and rating air navigation facilities**

35 The Administrator of the Federal Aviation Administration may inspect,  
 36 classify, and rate an air navigation facility available for the use of civil air-  
 37 craft on the suitability of the facility for that use.

38 **§ 44709. Amendments, modifications, suspensions, and rev-**  
 39 **ocations of certificates**

40 (a) REINSPECTION AND REEXAMINATION.—The Administrator of the  
 41 Federal Aviation Administration may reinspect at any time a civil aircraft,

1 aircraft engine, propeller, appliance, air navigation facility, or air agency,  
 2 or reexamine an airman holding a certificate issued under section 44703 of  
 3 this title.

4 (b) ACTIONS OF THE ADMINISTRATOR.—The Administrator may issue an  
 5 order amending, modifying, suspending, or revoking—

6 (1) any part of a certificate issued under this chapter if—

7 (A) the Administrator decides after conducting a reinspection,  
 8 reexamination, or other investigation that safety in air commerce  
 9 or air transportation and the public interest require that action;  
 10 or

11 (B) the holder of the certificate has violated an aircraft noise  
 12 or sonic boom standard or regulation prescribed under section  
 13 44715(a) of this title; and

14 (2) an airman certificate when the holder of the certificate is con-  
 15 victed of violating section 13(a) of the Fish and Wildlife Act of 1956  
 16 (16 U.S.C. 742j–1(a)).

17 (c) ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO AN-  
 18 SWER.—Before acting under subsection (b) of this section, the Adminis-  
 19 trator shall advise the holder of the certificate of the charges or other rea-  
 20 sons on which the Administrator relies for the proposed action. Except in  
 21 an emergency, the Administrator shall provide the holder an opportunity to  
 22 answer the charges and be heard why the certificate should not be amended,  
 23 modified, suspended, or revoked.

24 (d) APPEALS.—(1) A person adversely affected by an order of the Admin-  
 25 istrator under this section may appeal the order to the National Transpor-  
 26 tation Safety Board. After notice and an opportunity for a hearing, the  
 27 Board may amend, modify, or reverse the order when the Board finds—

28 (A) if the order was issued under subsection (b)(1)(A) of this sec-  
 29 tion, that safety in air commerce or air transportation and the public  
 30 interest do not require affirmation of the order; or

31 (B) if the order was issued under subsection (b)(1)(B) of this sec-  
 32 tion—

33 (i) that control or abatement of aircraft noise or sonic boom and  
 34 the public health and welfare do not require affirmation of the  
 35 order; or

36 (ii) the order, as it is related to a violation of aircraft noise or  
 37 sonic boom standards and regulations, is not consistent with safety  
 38 in air commerce or air transportation.

39 (2) The Board may modify a suspension or revocation of a certificate to  
 40 imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—When a person files an appeal with the Board under subsection (d) of the section, the order of the Administrator is stayed. However, if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately—

(1) the order is effective; and

(2) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(f) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence

#### **§44710. Revocations of airman certificates for controlled substance violations**

(a) DEFINITION.—In this section, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATION.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) APPEALS.—(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. When conducting the hearing, the Board is not bound by findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review



1 proceedings. Findings of fact of the Board are conclusive if supported by  
2 substantial evidence.

3 (e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board  
4 may not affirm a revocation of, an airman certificate under subsection  
5 (b)(2) of this section on the basis of an activity described in subsection  
6 (b)(2)(A) if the holder of the certificate is acquitted of all charges related  
7 to a controlled substance in an indictment or information arising from the  
8 activity.

9 (2) If the Administrator has revoked an airman certificate under this sec-  
10 tion because of an activity described in subsection (b)(2)(A) of this section,  
11 the Administrator shall reissue a certificate to the individual if—

12 (A) the individual otherwise satisfies the requirements for a certifi-  
13 cate under section 44703 of this title; and

14 (B)(i) the individual subsequently is acquitted of all charges related  
15 to a controlled substance in an indictment or information arising from  
16 the activity; or

17 (ii) the conviction on which a revocation under subsection (b)(1) of  
18 this section is based is reversed.

19 (f) WAIVERS.—The Administrator may waive the requirement of sub-  
20 section (b) of this section that an airman certificate of an individual be re-  
21 voked if—

22 (1) a law enforcement official of the United States Government or  
23 of a State requests a waiver; and

24 (2) the Administrator decides that the waiver will facilitate law en-  
25 forcement efforts.

## 26 **§ 44711. Prohibitions and exemption**

27 (a) PROHIBITIONS.—A person may not—

28 (1) operate a civil aircraft in air commerce without an airworthiness  
29 certificate in effect or in violation of a term of the certificate;

30 (2) serve in any capacity as an airman with respect to a civil air-  
31 craft, aircraft engine, propeller, or appliance used, or intended for use,  
32 in air commerce—

33 (A) without an airman certificate authorizing the airman to  
34 serve in the capacity for which the certificate was issued; or

35 (B) in violation of a term of the certificate or a regulation pre-  
36 scribed or order issued under section 44701(a) or (b) or 44702–  
37 44716 of this title;

38 (3) employ for service related to civil aircraft used in air commerce  
39 an airman who does not have an airman certificate authorizing the air-  
40 man to serve in the capacity for which the airman is employed;

(4) operate as an air carrier without an air carrier operating certificate or in violation of a term of the certificate;

(5) operate aircraft in air commerce in violation of a regulation prescribed or certificate issued under section 44701(a) or (b) or 44702–44716 of this title;

(6) operate a seaplane or other aircraft of United States registry on the high seas in violation of a regulation under section 3 of the International Navigational Rules Act of 1977 (33 U.S.C. 1602);

(7) violate a term of an air agency or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or 44702–44716 of this title related to the holder of the certificate;

(8) operate an airport without an airport operating certificate required under section 44706 of this title or in violation of a term of the certificate; or

(9) manufacture, deliver, sell, or offer for sale any aviation fuel or additive in violation of a regulation prescribed under section 44714 of this title.

(b) EXEMPTION.—On terms the Administrator of the Federal Aviation Administration prescribes as being in the public interest, the Administrator may exempt a foreign aircraft and airmen serving on the aircraft from subsection (a) of this section. However, an exemption from observing air traffic regulations may not be granted.

#### **§ 44712. Emergency locator transmitters**

(a) INSTALLATION.—An emergency locator transmitter must be installed on a fixed-wing powered civil aircraft for use in air commerce.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to—

(1) turbojet-powered aircraft;

(2) aircraft when used in scheduled flights by scheduled air carriers holding certificates issued by the Secretary of Transportation under subpart II of this part;

(3) aircraft when used in training operations conducted entirely within a 50 mile radius of the airport from which the training operations begin;

(4) aircraft when used in flight operations related to design and testing, the manufacture, preparation, and delivery of the aircraft, or the aerial application of a substance for an agricultural purpose;

(5) aircraft holding certificates from the Administrator of the Federal Aviation Administration for research and development;

(6) aircraft when used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

(7) aircraft equipped to carry only one individual.

(c) REMOVAL.—The Administrator shall prescribe regulations specifying the conditions under which an aircraft subject to subsection (a) of this section may operate when its emergency locator transmitter has been removed for inspection, repair, alteration, or replacement.

**§ 44713. Inspection and maintenance**

(a) GENERAL EQUIPMENT REQUIREMENTS.—An air carrier shall make, or cause to be made, any inspection, repair, or maintenance of equipment used in air transportation as required by this part or regulations prescribed or orders issued by the Administrator of the Federal Aviation Administration under this part. A person operating, inspecting, repairing, or maintaining the equipment shall comply with those requirements, regulations, and orders.

(b) DUTIES OF INSPECTORS.—The Administrator of the Federal Aviation Administration shall employ inspectors who shall—

(1) inspect aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture and when in use by an air carrier in air transportation, to enable the Administrator to decide whether the aircraft, aircraft engines, propellers, or appliances are in safe condition and maintained properly; and

(2) advise and cooperate with the air carrier during that inspection and maintenance.

(c) UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.—When an inspector decides that an aircraft, aircraft engine, propeller, or appliance is not in condition for safe operation, the inspector shall notify the air carrier in the form and way prescribed by the Administrator of the Federal Aviation Administration. For 5 days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the Administrator or the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

(d) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for processing forms for major repairs or alterations to fuel tanks and fuel systems of aircraft not used to provide air transportation that are necessary to make the system more effective in serving the needs of users of the system, including officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) The lack of a special identification feature to allow the forms to be distinguished easily from other major repair and alteration forms.

(B) The excessive period of time required to receive the forms at the Airmen and Aircraft Registry of the Administration.

(C) The backlog of forms waiting for processing at the Registry.

(D) The lack of ready access by law enforcement officials to information contained on the forms.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

#### **§ 44714. Aviation fuel standards**

The Administrator of the Federal Aviation Administration shall prescribe—

(1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and

(2) regulations providing for carrying out and enforcing those standards.

#### **§ 44715. Controlling aircraft noise and sonic boom**

(a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration shall prescribe—

(A) standards to measure aircraft noise and sonic boom; and

(B) regulations to control and abate aircraft noise and sonic boom.

(2) The Administrator of the Federal Aviation Administration may prescribe standards and regulations under this subsection only after consulting with the Administrator of the Environmental Protection Agency. The standards and regulations shall be applied when issuing, amending, modifying, suspending, or revoking a certificate authorized under this chapter.

(3) An original type certificate may be issued under section 44704(a) of this title for an aircraft for which substantial noise abatement can be achieved only after the Administrator of the Federal Aviation Administra-

1 tion prescribes standards and regulations under this section that apply to  
2 that aircraft.

3 (b) CONSIDERATIONS AND CONSULTATION.—When prescribing a stand-  
4 ard or regulation under this section, the Administrator of the Federal Avia-  
5 tion Administration shall—

6 (1) consider relevant information related to aircraft noise and sonic  
7 boom;

8 (2) consult with appropriate departments, agencies, and instrumen-  
9 talities of the United States Government and State and interstate au-  
10 thorities;

11 (3) consider whether the standard or regulation is consistent with  
12 the highest degree of safety in air transportation or air commerce in  
13 the public interest;

14 (4) consider whether the standard or regulation is economically rea-  
15 sonable, technologically practicable, and appropriate for the applicable  
16 aircraft, aircraft engine, appliance, or certificate; and

17 (5) consider the extent to which the standard or regulation will carry  
18 out the purposes of this section.

19 (c) PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL  
20 PROTECTION AGENCY.—The Administrator of the Environmental Protection  
21 Agency shall submit to the Administrator of the Federal Aviation Adminis-  
22 tration proposed regulations to control and abate aircraft noise and sonic  
23 boom (including control and abatement through the use of the authority of  
24 the Administrator of the Federal Aviation Administration) that the Admin-  
25 istrator of the Environmental Protection Agency considers necessary to pro-  
26 tect the public health and welfare. The Administrator of the Federal Avia-  
27 tion Administration shall consider those proposed regulations and shall pub-  
28 lish them in a notice of proposed regulations not later than 30 days after  
29 they are received. Not later than 60 days after publication, the Adminis-  
30 trator of the Federal Aviation Administration shall begin a hearing at which  
31 interested persons are given an opportunity for oral and written presen-  
32 tations. Not later than 90 days after the hearing is completed and after con-  
33 sulting with the Administrator of the Environmental Protection Agency, the  
34 Administrator of the Federal Aviation Administration shall—

35 (1) prescribe regulations as provided by this section—

36 (A) substantially the same as the proposed regulations submit-  
37 ted by the Administrator of the Environmental Protection Agency;  
38 or

39 (B) that amend the proposed regulations; or

40 (2) publish in the Federal Register—

(A) a notice that no regulation is being prescribed in response to the proposed regulations of the Administrator of the Environmental Protection Agency;

(B) a detailed analysis of, and response to, all information the Administrator of the Environmental Protection Agency submitted with the proposed regulations; and

(C) a detailed explanation of why no regulation is being prescribed.

(d) CONSULTATION AND REPORTS.—(1) If the Administrator of the Environmental Protection Agency believes that the action of the Administrator of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this section does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations in subsection (b) of this section, the Administrator of the Environmental Protection Agency shall consult with the Administrator of the Federal Aviation Administration and may request a report on the advisability of prescribing the regulation as originally proposed. The request, including a detailed statement of the information on which the request is based, shall be published in the Federal Register.

(2) The Administrator of the Federal Aviation Administration shall report to the Administrator of the Environmental Protection Agency within the time, if any, specified in the request. However, the time specified must be at least 90 days after the date of the request. The report shall—

(A) be accompanied by a detailed statement of the findings of the Administrator of the Federal Aviation Administration and the reasons for the findings;

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(C) specify whether and where that statement is available for public inspection; and

(D) be published in the Federal Register unless the request proposes specific action by the Administrator of the Federal Aviation Administration and the report indicates that action will be taken.

(e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental Protection Agency may request the Administrator of the Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the

time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the Administrator of the Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

(f) EXEMPTIONS.—An exemption from a standard or regulation prescribed under this section may be granted only if, before granting the exemption, the Administrator of the Federal Aviation Administration consults with the Administrator of the Environmental Protection Agency. However, if the Administrator of the Federal Aviation Administration finds that safety in air transportation or air commerce requires an exemption before the Administrator of the Environmental Protection Agency can be consulted, the exemption may be granted. The Administrator of the Federal Aviation Administration shall consult with the Administrator of the Environmental Protection Agency as soon as practicable after the exemption is granted.

#### **§ 44716. Collision avoidance systems**

(a) DEVELOPMENT AND CERTIFICATION.—The Administrator of the Federal Aviation Administration shall—

(1) complete the development of the collision avoidance system known as TCAS-II so that TCAS-II can operate under visual and instrument flight rules and can be upgraded to the performance standards applicable to the collision avoidance system known as TCAS-III;

(2) develop and carry out a schedule for developing and certifying TCAS-II that will result in certification not later than June 30, 1989; and

(3) submit to Congress monthly reports on the progress being made in developing and certifying TCAS-II.

(b) INSTALLATION AND OPERATION.—The Administrator shall require by regulation that, not later than 30 months after the date certification is made under subsection (a)(2) of this section, TCAS-II be installed and operated on each civil aircraft that has a maximum passenger capacity of at least 31 seats and is used to provide air transportation of passengers, including intrastate air transportation of passengers. The Administrator may extend the deadline in this subsection for not more than 2 years if the Administrator finds the extension is necessary to promote—

(1) a safe and orderly transition to the operation of a fleet of civil aircraft described in this subsection equipped with TCAS-II; or

(2) other safety objectives.

(c) OPERATIONAL EVALUATION.—Not later than December 30, 1990, the Administrator shall establish a one-year program to collect and assess safety

1 and operational information from civil aircraft equipped with TCAS-II for  
 2 the operational evaluation of TCAS-II. The Administrator shall encourage  
 3 foreign air carriers that operate civil aircraft equipped with TCAS-II to  
 4 participate in the program.

5 (d) AMENDING SCHEDULE FOR WINDSHEAR EQUIPMENT.—The Adminis-  
 6 trator shall consider the feasibility and desirability of amending the schedule  
 7 for installing airborne low-altitude windshear equipment to make the sched-  
 8 ule compatible with the schedule for installing TCAS-II.

9 (e) DEADLINE FOR DEVELOPMENT AND CERTIFICATION.—(1) The Ad-  
 10 ministrator shall complete developing and certifying TCAS-III as soon as  
 11 possible.

12 (2) Necessary amounts may be appropriated from the Airport and Airway  
 13 Trust Fund established under section 9502 of the Internal Revenue Code  
 14 of 1986 (26 U.S.C. 9502) to carry out this subsection.

15 (f) INSTALLING AND USING TRANSPONDERS.—The Administrator shall  
 16 prescribe regulations requiring that, not later than December 30, 1990, op-  
 17 erating transponders with automatic altitude reporting capability be in-  
 18 stalled and used for aircraft operating in designated terminal airspace where  
 19 radar service is provided for separation of aircraft. The Administrator may  
 20 provide for access to that airspace (except terminal control areas and air-  
 21 port radar service areas) by nonequipped aircraft if the Administrator finds  
 22 the access will not interfere with the normal traffic flow.

### 23 **§ 44717. Aging aircraft**

24 (a) INSPECTIONS AND REVIEWS.—The Administrator of the Federal  
 25 Aviation Administration shall prescribe regulations that ensure the continu-  
 26 ing airworthiness of aging aircraft. The regulations prescribed under sub-  
 27 section (a) of this section—

28 (1) at least shall require the Administrator to make inspections, and  
 29 review the maintenance and other records, of each aircraft an air car-  
 30 rier uses to provide air transportation that the Administrator decides  
 31 may be necessary to enable the Administrator to decide whether the  
 32 aircraft is in safe condition and maintained properly for operation in  
 33 air transportation;

34 (2) at least shall require an air carrier to demonstrate to the Admin-  
 35 istrator, as part of the inspection, that maintenance of the aircraft's  
 36 age-sensitive parts and components has been adequate and timely  
 37 enough to ensure the highest degree of safety;

38 (3) shall require the air carrier to make available to the Adminis-  
 39 trator the aircraft and any records about the aircraft that the Adminis-  
 40 trator requires to carry out a review; and



1 (4) shall establish procedures to be followed in carrying out an in-  
2 spection.

3 (b) WHEN AND HOW INSPECTIONS AND REVIEWS SHALL BE CARRIED  
4 OUT.—(1) Inspections and reviews required under subsection (a)(1) of this  
5 section shall be carried out as part of each heavy maintenance check of the  
6 aircraft conducted after the 14th year in which the aircraft has been in  
7 service.

8 (2) Inspections under subsection (a)(1) of this section shall be carried out  
9 as provided under section 44701(a)(2)(B) and (C) of this title.

10 (c) AIRCRAFT MAINTENANCE SAFETY PROGRAMS.—The Administrator  
11 shall establish—

12 (1) a program to verify that air carriers are maintaining their air-  
13 craft according to maintenance programs approved by the Adminis-  
14 trator;

15 (2) a program—

16 (A) to provide inspectors and engineers of the Administration  
17 with training necessary to conduct auditing inspections of aircraft  
18 operated by air carriers for corrosion and metal fatigue; and

19 (B) to enhance participation of those inspectors and engineers  
20 in those inspections; and

21 (3) a program to ensure that air carriers demonstrate to the Admin-  
22 istrator their commitment and technical competence to ensure the air-  
23 worthiness of aircraft that the carriers operate.

24 (d) FOREIGN AIR TRANSPORTATION.—(1) The Administrator shall take  
25 all possible steps to encourage governments of foreign countries and relevant  
26 international organizations to develop standards and requirements for in-  
27 spections and reviews that—

28 (A) will ensure the continuing airworthiness of aging aircraft used  
29 by foreign air carriers to provide foreign air transportation to and from  
30 the United States; and

31 (B) will provide passengers of those foreign air carriers with the  
32 same level of safety that will be provided passengers of air carriers by  
33 carrying out this section.

34 (2) Not later than September 30, 1994, the Administrator shall report  
35 to Congress on carrying out this subsection.

36 **§44718. Structures interfering with air commerce**

37 (a) NOTICE.—By regulation or by order when necessary, the Secretary  
38 of Transportation shall require a person to give adequate public notice, in  
39 the form and way the Secretary prescribes, of the construction, alteration,  
40 establishment, or expansion, or the proposed construction, alteration, estab-

lishment, or expansion, of a structure or sanitary landfill when the notice will promote—

(1) safety in air commerce; and

(2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.

(b) STUDIES.—(1) Under regulations prescribed by the Secretary, if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace, the Secretary shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the Secretary shall consider factors relevant to the efficient and effective use of the navigable airspace, including—

(A) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(B) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(C) the impact on existing public-use airports and aeronautical facilities;

(D) the impact on planned public-use airports and aeronautical facilities; and

(E) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

(2) On completing the study, the Secretary shall issue a report disclosing completely the extent of the adverse impact on the safe and efficient use of the navigable airspace that the Secretary finds will result from constructing or altering the structure.

(c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—

(1) the receipt and consideration of, and action on, the application; and

(2) the completion of any associated aeronautical study.

#### **§ 44719. Standards for navigational aids**

The Secretary of Transportation shall prescribe regulations on standards for installing navigational aids, including airport control towers. For each type of facility, the regulations shall consider at a minimum traffic density (number of aircraft operations without consideration of aircraft size), ter-

1 rain and other obstacles to navigation, weather characteristics, passengers  
2 served, and potential aircraft operating efficiencies.

3 **§ 44720. Meteorological services**

4 (a) RECOMMENDATIONS.—The Administrator of the Federal Aviation Ad-  
5 ministration shall make recommendations to the Secretary of Commerce on  
6 providing meteorological services necessary for the safe and efficient move-  
7 ment of aircraft in air commerce. In providing the services, the Secretary  
8 shall cooperate with the Administrator and give complete consideration to  
9 those recommendations.

10 (b) PROMOTING SAFETY AND EFFICIENCY.—To promote safety and effi-  
11 ciency in air navigation to the highest possible degree, the Secretary shall—

12 (1) observe, measure, investigate, and study atmospheric phenomena,  
13 and maintain meteorological stations and offices, that are necessary or  
14 best suited for finding out in advance information about probable  
15 weather conditions;

16 (2) provide reports to the Administrator to persons engaged in civil  
17 aeronautics that are designated by the Administrator and to other per-  
18 sons designated by the Secretary in a way and with a frequency that  
19 best will result in safety in, and facilitating, air navigation;

20 (3) cooperate with persons engaged in air commerce in meteorologi-  
21 cal services, maintain reciprocal arrangements with those persons in  
22 carrying out this clause, and collect and distribute weather reports  
23 available from aircraft in flight;

24 (4) maintain and coordinate international exchanges of meteorologi-  
25 cal information required for the safety and efficiency of air navigation;

26 (5) in cooperation with other departments, agencies, and instrumen-  
27 talities of the United States Government, meteorological services of for-  
28 eign countries, and persons engaged in air commerce, participate in de-  
29 veloping an international basic meteorological reporting network, in-  
30 cluding the establishment, operation, and maintenance of reporting sta-  
31 tions on the high seas, in polar regions, and in foreign countries;

32 (6) coordinate meteorological requirements in the United States to  
33 maintain standard observations, to promote efficient use of facilities,  
34 and to avoid duplication of services unless the duplication tends to pro-  
35 mote the safety and efficiency of air navigation; and

36 (7) promote and develop meteorological science and foster and sup-  
37 port research projects in meteorology through the use of private and  
38 governmental research facilities and provide for publishing the results  
39 of the projects unless publication would not be in the public interest.

1   **§ 44721. Aeronautical maps and charts**

2       (a) PUBLICATION.—(1) The Administrator of the Federal Aviation Ad-  
3       ministration may arrange for the publication of aeronautical maps and  
4       charts necessary for the safe and efficient movement of aircraft in air navi-  
5       gation, using the facilities and assistance of departments, agencies, and in-  
6       strumentalities of the United States Government as far as practicable.

7       (2) In carrying out paragraph (1) of this subsection, the Administrator  
8       shall update and arrange for the publication of clearly defined routes for  
9       navigating through a complex terminal airspace area and to and from an  
10      airport located in such an area, if the Administrator decides that publication  
11      of the routes would promote safety in air navigation. The routes shall be  
12      developed in consultation with pilots and other users of affected airports  
13      and shall be for the optional use of pilots operating under visual flight rules.

14      (b) INDEMNIFICATION.—The Government shall make an agreement to in-  
15      demnify any person that publishes a map or chart for use in aeronautics  
16      from any part of a claim arising out of the depiction by the person on the  
17      map or chart of a defective or deficient flight procedure or airway if the  
18      flight procedure or airway was—

19          (1) prescribed by the Administrator;

20          (2) depicted accurately on the map or chart; and

21          (3) not obviously defective or deficient.

22   **§ 44722. Aircraft operations in winter conditions**

23      The Administrator of the Federal Aviation Administration shall prescribe  
24      regulations requiring procedures to improve safety of aircraft operations  
25      during winter conditions. In deciding on the procedures to be required, the  
26      Administrator shall consider at least aircraft and air traffic control modi-  
27      fications, the availability of different types of deicing fluids (considering  
28      their efficacy and environmental limitations), the types of deicing equipment  
29      available, and the feasibility and desirability of establishing timeframes  
30      within which deicing must occur under certain types of inclement weather.

31   **§ 44723. Annual report**

32      Not later than January 1 of each year, the Secretary of Transportation  
33      shall submit to Congress a comprehensive report on the safety enforcement  
34      activities of the Federal Aviation Administration during the fiscal year end-  
35      ing the prior September 30th. The report shall include—

36          (1) a comparison of end-of-year staffing levels by operations, mainte-  
37          nance, and avionics inspector categories to staffing goals and a state-  
38          ment on how staffing standards were applied to make allocations be-  
39          tween air carrier and general aviation operations, maintenance, and  
40          avionics inspectors;

1 (2) schedules showing the range of inspector experience by various  
2 inspector work force categories, and the number of inspectors in each  
3 of the categories who are considered fully qualified;

4 (3) schedules showing the number and percentage of inspectors who  
5 have received mandatory training by individual course, and the number  
6 of inspectors by work force categories, who have received all mandatory  
7 training;

8 (4) a description of the criteria used to set annual work programs,  
9 an explanation of how these criteria differ from criteria used in the  
10 prior fiscal year and how the annual work programs ensure compliance  
11 with appropriate regulations and safe operating practices;

12 (5) a comparison of actual inspections performed during the fiscal  
13 year to the annual work programs by field location and, for any field  
14 location completing less than 80 percent of its planned number of in-  
15 spections, an explanation of why annual work program plans were not  
16 met;

17 (6) a statement of the adequacy of Administration internal manage-  
18 ment controls available to ensure that field managers comply with Ad-  
19 ministration policies and procedures, including those on inspector prior-  
20 ities, district office coordination, minimum inspection standards, and  
21 inspection followup;

22 (7) the status of efforts made by the Administration to update in-  
23 specter guidance documents and regulations to include technological,  
24 management, and structural changes taking place in the aviation indus-  
25 try, including a listing of the backlog of all proposed regulatory amend-  
26 ments;

27 (8) a list of the specific operational measures of effectiveness used  
28 to evaluate—

29 (A) the progress in meeting program objectives;

30 (B) the quality of program delivery; and

31 (C) the nature of emerging safety problems;

32 (9) a schedule showing the number of civil penalty cases closed dur-  
33 ing the 2 prior fiscal years, including the total initial and final pen-  
34 alties imposed, the total number of dollars collected, the range of dollar  
35 amounts collected, the average case processing time, and the range of  
36 case processing time;

37 (10) a schedule showing the number of enforcement actions taken  
38 (except civil penalties) during the 2 prior fiscal years, including the  
39 total number of violations cited, and the number of cited violation cases  
40 closed by certificate suspensions, certificate revocations, warnings, and  
41 no action taken; and

(11) schedules showing the safety record of the aviation industry during the fiscal year for air carriers and general aviation, including—

(A) the number of inspections performed when deficiencies were identified compared with inspections when no deficiencies were found;

(B) the frequency of safety deficiencies for each air carrier; and

(C) an analysis based on data of the general status of air carrier and general aviation compliance with aviation regulations.

## CHAPTER 449—SECURITY

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### SUBCHAPTER I—REQUIREMENTS

#### **§ 44901. Screening passengers and property**

(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

(b) AMENDING REGULATIONS.—Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation.

(c) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Administrator—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Administrator decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

#### **§ 44902. Refusal to transport passengers and property**

(a) MANDATORY REFUSAL.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the Administrator, an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

#### **§ 44903. Air transportation security**

(a) DEFINITION.—In this section, “law enforcement personnel” means individuals—

(1) authorized to carry and use firearms;

(2) vested with the degree of the police power of arrest the Administrator of the Federal Aviation Administration considers necessary to carry out this section; and

(3) identifiable by appropriate indicia of authority.

1 (b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Administrator  
2 shall prescribe regulations to protect passengers and property on an aircraft  
3 operating in air transportation or intrastate air transportation against an  
4 act of criminal violence or aircraft piracy. When prescribing a regulation  
5 under this subsection, the Administrator shall—

6 (1) consult with the Secretary of Transportation, the Attorney Gen-  
7 eral, the heads of other departments, agencies, and instrumentalities of  
8 the United States Government, and State and local authorities;

9 (2) consider whether a proposed regulation is consistent with—

10 (A) protecting passengers; and

11 (B) the public interest in promoting air transportation and  
12 intrastate air transportation;

13 (3) to the maximum extent practicable, require a uniform procedure  
14 for searching and detaining passengers and property to ensure—

15 (A) their safety; and

16 (B) courteous and efficient treatment by an air carrier, an  
17 agent or employee of an air carrier, and Government, State, and  
18 local law enforcement personnel carrying out this section; and

19 (4) consider the extent to which a proposed regulation will carry out  
20 this section.

21 (c) SECURITY PROGRAMS.—(1) The Administrator shall prescribe regula-  
22 tions under subsection (b) of this section that require each operator of an  
23 airport regularly serving an air carrier holding a certificate issued by the  
24 Secretary of Transportation to establish an air transportation security pro-  
25 gram that provides a law enforcement presence and capability at each of  
26 those airports that is adequate to ensure the safety of passengers. The regu-  
27 lations shall authorize the operator to use the services of qualified State,  
28 local, and private law enforcement personnel. When the Administrator de-  
29 cides, after being notified by an operator in the form the Administrator pre-  
30 scribes, that not enough qualified State, local, and private law enforcement  
31 personnel are available to carry out subsection (b), the Administrator may  
32 authorize the operator to use, on a reimbursable basis, personnel employed  
33 by the Administrator, or by another department, agency, or instrumentality  
34 of the Government with the consent of the head of the department, agency,  
35 or instrumentality, to supplement State, local, and private law enforcement  
36 personnel. When deciding whether additional personnel are needed, the Ad-  
37 ministrator shall consider the number of passengers boarded at the airport,  
38 the extent of anticipated risk of criminal violence or aircraft piracy at the  
39 airport or to the air carrier aircraft operations at the airport, and the avail-  
40 ability of qualified State or local law enforcement personnel at the airport.



1 (2)(A) The Administrator may approve a security program of an airport  
2 operator, or an amendment in an existing program, that incorporates a se-  
3 curity program of an airport tenant (except an air carrier separately com-  
4 plying with part 108 or 129 of title 14, Code of Federal Regulations) having  
5 access to a secured area of the airport, if the program or amendment incor-  
6 porates—

7 (i) the measures the tenant will use, within the tenant's leased areas  
8 or areas designated for the tenant's exclusive use under an agreement  
9 with the airport operator, to carry out the security requirements im-  
10 posed by the Administrator on the airport operator under the access  
11 control system requirements of section 107.14 of title 14, Code of Fed-  
12 eral Regulations, or under other requirements of part 107 of title 14;  
13 and

14 (ii) the methods the airport operator will use to monitor and audit  
15 the tenant's compliance with the security requirements and provides  
16 that the tenant will be required to pay monetary penalties to the air-  
17 port operator if the tenant fails to carry out a security requirement  
18 under a contractual provision or requirement imposed by the airport  
19 operator.

20 (B) If the Administrator approves a program or amendment described in  
21 subparagraph (A) of this paragraph, the airport operator may not be found  
22 to be in violation of a requirement of this subsection or subsection (b) of  
23 this section when the airport operator demonstrates that the tenant or an  
24 employee, permittee, or invitee of the tenant is responsible for the violation  
25 and that the airport operator has complied with all measures in its security  
26 program for securing compliance with its security program by the tenant.

27 (d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE AR-  
28 RESTS.—With the approval of the Attorney General and the Secretary of  
29 State, the Secretary of Transportation may authorize an individual who car-  
30 ries out air transportation security duties—

31 (1) to carry firearms; and

32 (2) to make arrests without warrant for an offense against the Unit-  
33 ed States committed in the presence of the individual or for a felony  
34 under the laws of the United States, if the individual reasonably be-  
35 lieves the individual to be arrested has committed or is committing a  
36 felony.

37 (e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Ad-  
38 ministrator has the exclusive responsibility to direct law enforcement activity  
39 related to the safety of passengers on an aircraft involved in an offense  
40 under section 46502 of this title from the moment all external doors of the  
41 aircraft are closed following boarding until those doors are opened to allow

passengers to leave the aircraft. When requested by the Administrator, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

**§ 44904. Domestic air transportation system security**

(a) ASSESSING THREATS.—The Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The Administrator and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) ASSESSING SECURITY.—In coordination with the Director, the Administrator shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

(1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;

(2) space requirements for security personnel and equipment;

(3) separation of screened and unscreened passengers, baggage, and cargo;

(4) separation of the controlled and uncontrolled areas of airport facilities; and

(5) coordination of the activities of security personnel of the Administration, the United States Customs Service, the Immigration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) IMPROVING SECURITY.—The Administrator shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

**§ 44905. Information about threats to civil aviation**

(a) PROVIDING INFORMATION.—Under guidelines the Secretary of Transportation prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the Secretary.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent fea-

sible, the safety of passengers and crew of a particular flight or series of flights, the Administrator of the Federal Aviation Administration shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—(1) The President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—

(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;

(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and

(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—

(A) the specificity of the threat;

(B) the credibility of intelligence information related to the threat;

(C) the ability to counter the threat effectively;

(D) the protection of intelligence information sources and methods;

(E) cancellation, by an air carrier or the Administrator, of a flight or series of flights instead of public notice;

(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and

(G) other factors the Administrator considers appropriate.

(d) GUIDELINES ON NOTICE TO CREWS.—The Administrator shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

(e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

(f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the Administrator shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, including providing notice to the public and flight and cabin crews under this section.

(g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this section shall be distributed for use by appropriate officials of the Depart-

ment of Transportation, the Department of State, the Department of Justice, and air carriers.

**§ 44906. Foreign air carrier security programs**

The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator may approve a security program of a foreign air carrier under section 129.25 only if the Administrator decides the security program provides passengers of the foreign air carrier a level of protection similar to the level those passengers would receive under the security programs of air carriers serving the same airport. The Administrator shall require a foreign air carrier to use procedures equivalent to those required of air carriers serving the same airport if the Administrator decides that the procedures are necessary to provide a level of protection similar to that provided passengers of the air carriers serving the same airport. The Administrator shall prescribe regulations to carry out this section.

**§ 44907. Security standards at foreign airports**

(a) ASSESSMENT.—(1) At intervals the Secretary of Transportation considers necessary, the Secretary shall assess the effectiveness of the security measures maintained at—

(A) a foreign airport—

(i) served by an air carrier;

(ii) from which a foreign air carrier serves the United States;

or

(iii) that poses a high risk of introducing danger to international air travel; and

(B) other foreign airports the Secretary considers appropriate.

(2) The Secretary of Transportation shall conduct an assessment under paragraph (1) of this subsection—

(A) in consultation with appropriate aeronautic authorities of the government of a foreign country concerned and each air carrier serving the foreign airport for which the Secretary is conducting the assessment;

(B) to establish the extent to which a foreign airport effectively maintains and carries out security measures; and

(C) by using a standard that will result in an analysis of the security measures at the airport based at least on the standards and appropriate recommended practices contained in Annex 17 to the Convention on International Civil Aviation in effect on the date of the assessment.

(3) Each report to Congress required under section 44938(b) of this title shall contain a summary of the assessments conducted under this subsection.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the Secretary of Transportation shall consult with the Secretary of State—

(1) on the terrorist threat that exists in each country; and

(2) to establish which foreign airports are not under the de facto control of the government of the foreign country in which they are located and pose a high risk of introducing danger to international air travel.

(c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Transportation, after conducting an assessment under subsection (a) of this section, decides that an airport does not maintain and carry out effective security measures, the Secretary of Transportation, after advising the Secretary of State, shall notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the Secretary of Transportation in making the assessment.

(d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EFFECTIVE SECURITY MEASURES.—(1) When the Secretary of Transportation decides under this section that an airport does not maintain and carry out effective security measures—

(A) the Secretary of Transportation shall—

(i) publish the identity of the airport in the Federal Register;

(ii) have the identity of the airport posted and displayed prominently at all United States airports at which scheduled air carrier operations are provided regularly; and

(iii) notify the news media of the identity of the airport;

(B) each air carrier and foreign air carrier providing transportation between the United States and the airport shall provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the airport;

(C) notwithstanding section 40105(b) of this title, the Secretary of Transportation, after consulting with the appropriate aeronautic authorities of the foreign country concerned and each air carrier serving the airport and with the approval of the Secretary of State, may withhold, revoke, or prescribe conditions on the operating authority of an air carrier or foreign air carrier that uses that airport to provide foreign air transportation; and

(D) the President may prohibit an air carrier or foreign air carrier from providing transportation between the United States and any other

foreign airport that is served by aircraft flying to or from the airport with respect to which a decision is made under this section.

(2)(A) Paragraph (1) of this subsection becomes effective—

(i) 90 days after the government of a foreign country is notified under subsection (c) of this section if the Secretary of Transportation finds that the government has not brought the security measures at the airport up to the standard the Secretary used in making an assessment under subsection (a) of this section; or

(ii) immediately on the decision of the Secretary of Transportation under subsection (c) of this section if the Secretary of Transportation decides, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from the airport.

(B) The Secretary of Transportation immediately shall notify the Secretary of State of a decision under subparagraph (A)(ii) of this paragraph so that the Secretary of State may issue a travel advisory required under section 44908(a) of this title.

(3) The Secretary of Transportation promptly shall submit to Congress a report (and classified annex if necessary) on action taken under paragraph (1) or (2) of this subsection, including information on attempts made to obtain the cooperation of the government of a foreign country in meeting the standard the Secretary used in assessing the airport under subsection (a) of this section.

(4) An action required under paragraph (1)(A) and (B) of this subsection is no longer required only if the Secretary of Transportation, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the airport. The Secretary of Transportation shall notify Congress when the action is no longer required to be taken.

(e) SUSPENSIONS.—Notwithstanding sections 40105(b) and 40106(b) of this title, the Secretary of Transportation, with the approval of the Secretary of State and without notice or a hearing, shall suspend the right of an air carrier or foreign air carrier to provide foreign air transportation, and the right of a person to operate aircraft in foreign air commerce, to or from a foreign airport when the Secretary of Transportation decides that—

(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and

(2) the public interest requires an immediate suspension of transportation between the United States and that airport.

(f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to authority the Secretary of Transportation grants under this part to an air carrier or foreign air carrier.

**§ 44908. Travel advisory and suspension of foreign assistance**

(a) TRAVEL ADVISORIES.—On being notified by the Secretary of Transportation that the Secretary of Transportation has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

- (1) immediately shall issue a travel advisory for that airport;
- (2) shall publish the advisory in the Federal Register; and
- (3) shall publicize the advisory widely.

(b) SUSPENDING ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the Secretary of Transportation has made a decision as provided under section 44907(d)(4) of this title. The Secretary shall notify Congress when the action is no longer required to be taken.

**§ 44909. Passenger manifests**

(a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991, the Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest shall include the following information:

- (A) the full name of each passenger.
- (B) the passport number of each passenger, if required for travel.
- (C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a) (1) and (2) of this section.

**§ 44910. Agreements on aircraft sabotage, aircraft hijacking, and airport security**

The Secretary of State shall seek multilateral and bilateral agreement on strengthening enforcement measures and standards for compliance related to aircraft sabotage, aircraft hijacking, and airport security.

**§ 44911. Intelligence**

(a) DEFINITION.—In this section, “intelligence community” means the intelligence and intelligence-related activities of the following units of the United States Government:

- (1) the Department of State.
- (2) the Department of Defense.
- (3) the Department of the Treasury.
- (4) the Department of Energy.
- (5) the Departments of the Army, Navy, and Air Force.
- (6) the Central Intelligence Agency.
- (7) the National Security Agency.
- (8) the Defense Intelligence Agency.
- (9) the Federal Bureau of Investigation.
- (10) the Drug Enforcement Administration.

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about international terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the Administrator of the Federal Aviation Administration.

(c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the units in the intelligence community shall consider placing greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the Secretary, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.



(e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intelligence community, the Secretary, and the Administrator shall review and, as appropriate, revise written working agreements between the intelligence community and the Administrator.

**§ 44912. Research and development**

(a) PROGRAM REQUIREMENT.—(1) The Administrator of the Federal Aviation Administration shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place, not later than November 16, 1993, new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the Administrator shall—

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the Administrator shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4) The Administrator may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the Administrator decides are appropriate.

(b) REVIEW OF THREATS.—(1) The Administrator shall complete an intensive review of threats to civil aviation, with particular focus on—

(A) explosive material that presents the most significant threat to civil aircraft;

(B) the minimum amounts, configurations, and types of explosive material that can cause, or would reasonably be expected to cause, cat-

1       astrophic damage to commercial aircraft in service and expected to be  
2       in service in the 10-year period beginning on November, 16, 1990;

3       (C) the amounts, configurations, and types of explosive material that  
4       can be detected reliably by existing, or reasonably anticipated, near-  
5       term explosive detection technologies;

6       (D) the feasibility of using various ways to minimize damage caused  
7       by explosive material that cannot be detected reliably by existing, or  
8       reasonably anticipated, near-term explosive detection technologies;

9       (E) the ability to screen passengers, carry-on baggage, checked bag-  
10      gage, and cargo; and

11      (F) the technologies that might be used in the future to attempt to  
12      destroy or otherwise threaten commercial aircraft and the way in which  
13      those technologies can be countered effectively.

14      (2) The Administrator shall use the results of the review under this sub-  
15      section to develop the focus and priorities of the program established under  
16      subsection (a) of this section.

17      (c) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a  
18      scientific advisory panel, as a subcommittee of the Research, Engineering  
19      and Development Advisory Committee, to review, comment on, advise on the  
20      progress of, and recommend modifications in, the program established under  
21      subsection (a) of this section, including the need for long-range research  
22      programs to detect and prevent catastrophic damage to commercial aircraft  
23      by the next generation of terrorist weapons. The panel shall consist of indi-  
24      viduals with scientific and technical expertise in—

25          (1) the development and testing of effective explosive detection sys-  
26          tems;

27          (2) aircraft structure and experimentation to decide on the type and  
28          minimum weights of explosives that an effective technology must be ca-  
29          pable of detecting;

30          (3) technologies involved in minimizing airframe damage to aircraft  
31          from explosives; and

32          (4) other scientific and technical areas the Administrator considers  
33          appropriate.

#### 34      **§ 44913. Explosive detection**

35      (a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or  
36      purchase of explosive detection equipment under section 108.7(b)(8) or  
37      108.20 of title 14, Code of Federal Regulations, or similar regulation is re-  
38      quired only if the Administrator of the Federal Aviation Administration cer-  
39      tifies that the equipment alone, or as part of an integrated system, can de-  
40      tect under realistic air carrier operating conditions the amounts, configura-  
41      tions, and types of explosive material that would likely be used to cause cat-

1     astrophic damage to commercial aircraft. The Administrator shall base the  
 2     certification on the results of tests conducted under protocols developed in  
 3     consultation with expert scientists outside of the Administration. Those tests  
 4     shall be completed not later than April 16, 1992.

5     (2) Before completion of the tests described in paragraph (1) of this sub-  
 6     section, but not later than April 16, 1992, the Administrator may require  
 7     deployment of explosive detection equipment described in paragraph (1) if  
 8     the Administrator decides that deployment will enhance aviation security  
 9     significantly. In making that decision, the Administrator shall consider fac-  
 10    tors such as the ability of the equipment alone, or as part of an integrated  
 11    system, to detect under realistic air carrier operating conditions the  
 12    amounts, configurations, and types of explosive material that would likely  
 13    be used to cause catastrophic damage to commercial aircraft. The Adminis-  
 14    trator shall notify the Committee on Commerce, Science, and Transpor-  
 15    tation of the Senate and the Committee on Public Works and Transpor-  
 16    tation of the House of Representatives of a deployment decision made under  
 17    this paragraph.

18    (3) This subsection does not prohibit the Administrator from purchasing  
 19    or deploying explosive detection equipment described in paragraph (1) of  
 20    this subsection.

21    (b) GRANTS.—The Secretary of Transportation may provide grants to  
 22    continue the Explosive Detection K-9 Team Training Program to detect  
 23    explosives at airports and on aircraft.

#### 24    **§ 44914. Airport construction guidelines**

25    In consultation with air carriers, airport authorities, and others the Ad-  
 26    ministrator of the Federal Aviation Administration considers appropriate,  
 27    the Administrator shall develop guidelines for airport design and construc-  
 28    tion to allow for maximum security enhancement. In developing the guide-  
 29    lines, the Administrator shall consider the results of the assessment carried  
 30    out under section 44904(a) of this title.

#### 31    **§ 44915. Exemptions**

32    The Administrator of the Federal Aviation Administration may exempt  
 33    from sections 44901, 44903(a)–(c) and (e), 44906, 44935, and 44936 of  
 34    this title airports in Alaska served only by air carriers that—

35       (1) hold certificates issued under section 41102 of this title;

36       (2) operate aircraft with certificates for a maximum gross takeoff  
 37       weight of less than 12,500 pounds; and

38       (3) board passengers, or load property intended to be carried in an  
 39       aircraft cabin, that will be screened under section 44901 of this title  
 40       at another airport in Alaska before the passengers board, or the prop-  
 41       erty is loaded on, an aircraft for a place outside Alaska.

## SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

**§ 44931. Director of Intelligence and Security**

(a) ORGANIZATION.—There is in the Office of the Secretary of Transportation a Director of Intelligence and Security. The Director reports directly to the Secretary.

(b) DUTIES AND POWERS.—The Director shall—

(1) receive, assess, and distribute intelligence information related to long-term transportation security;

(2) develop policies, strategies, and plans for dealing with threats to transportation security;

(3) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(4) serve as the primary liaison of the Secretary to the intelligence and law enforcement communities; and

(5) carry out other duties and powers the Secretary decides are necessary to ensure, to the extent possible, the security of the traveling public.

**§ 44932. Assistant Administrator for Civil Aviation Security**

(a) ORGANIZATION.—There is an Assistant Administrator for Civil Aviation Security. The Assistant Administrator reports directly to the Administrator of the Federal Aviation Administration and is subject to the authority of the Administrator.

(b) DUTIES AND POWERS.—The Assistant Administrator shall—

(1) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933 of this title;

(2) enforce security-related requirements;

(3) identify the research and development requirements of security-related activities;

(4) inspect security systems;

(5) report information to the Director of Intelligence and Security that may be necessary to allow the Director to carry out assigned duties and powers;

(6) assess threats to civil aviation; and

(7) carry out other duties and powers the Administrator considers appropriate.

(c) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECURITY.—The Assistant Administrator shall review and, as necessary, develop ways to strengthen air transportation security, including ways—

(1) to strengthen controls over checked baggage in air transportation, including ways to ensure baggage reconciliation and inspection of items in passenger baggage that could potentially contain explosive devices;

(2) to strengthen control over individuals having access to aircraft;

(3) to improve testing of security systems;

(4) to ensure the use of the best available x-ray equipment for air transportation security purposes; and

(5) to strengthen preflight screening of passengers.

#### **§ 44933. Federal Security Managers**

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Administrator of the Federal Aviation Administration shall establish the position of Federal Security Manager at each airport in the United States at which the Administrator decides a Manager is necessary for air transportation security. The Administrator shall designate individuals as Managers for, and station those Managers at, those airports. The Administrator may designate a current field employee of the Administration as a Manager. A Manager reports directly to the Assistant Administrator for Civil Aviation Security. The Administrator shall station an individual as Manager at each airport in the United States that the Secretary of Transportation designates as a category X airport.

(b) DUTIES AND POWERS.—The Manager at each airport shall—

(1) receive intelligence information related to aviation security;

(2) ensure, and assist in, the development of a comprehensive security plan for the airport that—

(A) establishes the responsibilities of each air carrier and airport operator for air transportation security at the airport; and

(B) includes measures to be taken during periods of normal airport operations and during periods when the Manager decides that there is a need for additional airport security, and identifies the individuals responsible for carrying out those measures;

(3) oversee and enforce the carrying out by air carriers and airport operators of United States Government security requirements, including the security plan under clause (2) of this subsection;

(4) serve as the on-site coordinator of the Administrator's response to terrorist incidents and threats at the airport;

(5) coordinate the day-to-day Government aviation security activities at the airport;

(6) coordinate efforts related to aviation security with local law enforcement; and

(7) coordinate activities with other Managers.

(c) LIMITATION.—A Civil Aviation Security Field Officer may not be assigned security duties and powers at an airport having a Manager.

#### **§ 44934. Foreign Security Liaison Officers**

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Administrator of the Federal Aviation Administration shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Administrator decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the Administrator shall designate an Officer for each of those airports. In coordination with the Secretary, the Administrator shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) DUTIES AND POWERS.—An Officer reports directly to the Assistant Administrator for Civil Aviation Security. The Officer at each airport shall—

(1) serve as the liaison of the Assistant Administrator to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and

(2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

#### **§ 44935. Employment standards and training**

(a) EMPLOYMENT STANDARDS.—The Administrator of the Federal Aviation Administration shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Administrator shall review issues related to human performance in the aviation security system

1 to maximize that performance. When the review is completed, the Adminis-  
 2 trator shall recommend guidelines and prescribe appropriate changes in ex-  
 3 isting procedures to improve that performance.

4 (c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICA-  
 5 TIONS.—(1) The Administrator—

6 (A) may train individuals employed to carry out a security program  
 7 under section 44903(c) of this title; and

8 (B) shall prescribe uniform training standards and uniform mini-  
 9 mum qualifications for individuals eligible for that training.

10 (2) The Administrator may authorize reimbursement for travel, transpor-  
 11 tation, and subsistence expenses for security training of non-United States  
 12 Government domestic and foreign individuals whose services will contribute  
 13 significantly to carrying out civil aviation security programs. To the extent  
 14 practicable, air travel reimbursed under this paragraph shall be on air  
 15 carriers.

16 (d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINA-  
 17 TORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Administrator  
 18 shall prescribe standards for educating and training—

19 (A) ground security coordinators;

20 (B) security supervisory personnel; and

21 (C) airline pilots as in-flight security coordinators.

22 (2) The standards shall include initial training, retraining, and continuing  
 23 education requirements and methods. Those requirements and methods shall  
 24 be used annually to measure the performance of ground security coordina-  
 25 tors and security supervisory personnel.

## 26 **§ 44936. Employment investigations and restrictions**

27 (a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1) The Adminis-  
 28 trator of the Federal Aviation Administration shall require by regulation  
 29 that an employment investigation, including a criminal history record check,  
 30 shall be conducted, as the Administrator decides is necessary to ensure air  
 31 transportation security, of each individual employed in, or applying for, a  
 32 position in which the individual has unescorted access, or may permit other  
 33 individuals to have unescorted access, to—

34 (A) aircraft of an air carrier or foreign air carrier; or

35 (B) a secured area of an airport in the United States the Adminis-  
 36 trator designates that serves an air carrier or foreign air carrier.

37 (2) An air carrier, foreign air carrier, or airport operator that employs,  
 38 or authorizes or makes a contract for the services of, an individual in a posi-  
 39 tion described in paragraph (1) of this subsection shall ensure that the in-  
 40 vestigation the Administrator requires is conducted.

(b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, or airport operator may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed robbery;

(xii) distribution of, or intent to distribute, a controlled substance; or

(xiii) conspiracy to commit any of the acts referred to in clauses (i)–(xii) of this paragraph.

(2) The Administrator may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, or airport operator may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Administrator approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the Administrator requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Administrator shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Administrator designates. Before designating an individual to obtain and sub-



mit fingerprints or receive results of a check, the Administrator shall consult with the Attorney General.

(2) The Administrator shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) FEES AND CHARGES.—The Administrator and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the expenses were incurred and are available to the Administrator and the Attorney General for those expenses.

(e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

#### **§ 44937. Prohibition on transferring duties and powers**

Except as specifically provided by law, the Administrator of the Federal Aviation Administration may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906(a)(1) or (b), 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

#### **§ 44938. Reports**

(a) TRANSPORTATION SECURITY.—Not later than December 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the annual report the Administrator of the Federal Aviation Administration submits under subsection (b) of this section, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(c) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

(5) an evaluation of cooperation with foreign transportation and security authorities;

(6) the status of the extent to which the recommendations of the President's Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

(7) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Administrator related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Administrator shall submit annually to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the Administrator decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.

(c) DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.—The Administrator shall submit to Congress an annual report for each of the calendar years 1991 and 1992 on the progress being made, and the problems occur-

ring, in carrying out section 44904 of this title. The report shall include recommendations for improving domestic air transportation security.

## CHAPTER 451—ALCOHOL AND CONTROLLED SUBSTANCES TESTING

Sec.

45101. Definition.

45102. Alcohol and controlled substances testing programs.

45103. Prohibited service.

45104. Testing and laboratory requirements.

45105. Rehabilitation.

45106. Relationship to other laws, regulations, standards, and orders.

### § 45101. Definition

In this chapter, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Administrator of the Federal Aviation Administration.

### § 45102. Alcohol and controlled substances testing programs

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—(1) In the interest of aviation safety, the Administrator of the Federal Aviation Administration shall prescribe regulations not later than October 28, 1992, that establish a program requiring air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—(1) The Administrator shall establish a program of preemployment, reasonable suspicion, random, and post-accident testing for the use of alcohol or a controlled substance in violation of law or a Government regulation for employees of the Administration whose duties include responsibility for safety-sensitive functions.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of employees of the Administration responsible for safety-

1 sensitive functions for use of alcohol or a controlled substance in violation  
2 of law or a Government regulation.

3 (c) SANCTIONS.—In prescribing regulations under the programs required  
4 by this section, the Administrator shall require, as the Administrator consid-  
5 ers appropriate, the suspension or revocation of any certificate issued to an  
6 individual referred to in this section, or the disqualification or dismissal of  
7 the individual, under this chapter when a test conducted and confirmed  
8 under this chapter indicates the individual has used alcohol or a controlled  
9 substance in violation of law or a Government regulation.

10 **§ 45103. Prohibited service**

11 (a) USE OF ALCOHOL OR A CONTROLLED SUBSTANCE.—An individual  
12 may not use alcohol or a controlled substance after October 28, 1991, in  
13 violation of law or a United States Government regulation and serve as an  
14 airman, crewmember, airport security screening contract employee, air car-  
15 rier employee responsible for safety-sensitive functions (as decided by the  
16 Administrator of the Federal Aviation Administration), or employee of the  
17 Administration with responsibility for safety-sensitive functions.

18 (b) REHABILITATION REQUIRED TO RESUME SERVICE.—Notwithstand-  
19 ing subsection (a) of this section, an individual found to have used alcohol  
20 or a controlled substance after October 28, 1991, in violation of law or a  
21 Government regulation may serve as an airman, crewmember, airport secu-  
22 rity screening contract employee, air carrier employee responsible for safety-  
23 sensitive functions (as decided by the Administrator), or employee of the  
24 Administration with responsibility for safety-sensitive functions only if the  
25 individual completes a rehabilitation program described in section 45105 of  
26 this title.

27 (c) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—An individual who  
28 served as an airman, crewmember, airport security screening contract em-  
29 ployee, air carrier employee responsible for safety-sensitive functions (as de-  
30 cided by the Administrator), or employee of the Administration with respon-  
31 sibility for safety-sensitive functions and who was found by the Adminis-  
32 trator to have used alcohol or a controlled substance after October 28,  
33 1991, in violation of law or a Government regulation may not carry out the  
34 duties related to air transportation that the individual carried out before the  
35 finding of the Administrator if the individual—

36 (1) used the alcohol or controlled substance when on duty;

37 (2) began or completed a rehabilitation program described in section  
38 45105 of this title before using the alcohol or controlled substance; or

39 (3) refuses to begin or complete a rehabilitation program described  
40 in section 45105 of this title after a finding by the Administrator under  
41 this section.

1   **§ 45104. Testing and laboratory requirements**

2       In carrying out section 45102 of this title, the Administrator of the Fed-  
3       eral Aviation Administration shall develop requirements that—

4           (1) promote, to the maximum extent practicable, individual privacy  
5       in the collection of specimens;

6           (2) for laboratories and testing procedures for controlled substances,  
7       incorporate the Department of Health and Human Services scientific  
8       and technical guidelines dated April 11, 1988, and any amendments to  
9       those guidelines, including mandatory guidelines establishing—

10           (A) comprehensive standards for every aspect of laboratory con-  
11       trolled substances testing and laboratory procedures to be applied  
12       in carrying out this chapter, including standards requiring the use  
13       of the best available technology to ensure the complete reliability  
14       and accuracy of controlled substances tests and strict procedures  
15       governing the chain of custody of specimens collected for con-  
16       trolled substances testing;

17           (B) the minimum list of controlled substances for which individ-  
18       uals may be tested; and

19           (C) appropriate standards and procedures for periodic review of  
20       laboratories and criteria for certification and revocation of certifi-  
21       cation of laboratories to perform controlled substances testing in  
22       carrying out this chapter;

23       (3) require that a laboratory involved in controlled substances testing  
24       under this chapter have the capability and facility, at the laboratory,  
25       of performing screening and confirmation tests;

26       (4) provide that all tests indicating the use of alcohol or a controlled  
27       substance in violation of law or a United States Government regulation  
28       be confirmed by a scientifically recognized method of testing capable  
29       of providing quantitative information about alcohol or a controlled sub-  
30       stance;

31       (5) provide that each specimen be subdivided, secured, and labeled  
32       in the presence of the tested individual and that a part of the specimen  
33       be retained in a secure manner to prevent the possibility of tampering,  
34       so that if the individual's confirmation test results are positive the indi-  
35       vidual has an opportunity to have the retained part tested by a 2d con-  
36       firmation test done independently at another certified laboratory if the  
37       individual requests the 2d confirmation test not later than 3 days after  
38       being advised of the results of the first confirmation test;

39       (6) ensure appropriate safeguards for testing to detect and quantify  
40       alcohol in breath and body fluid samples, including urine and blood,

1 through the development of regulations that may be necessary and in  
2 consultation with the Secretary of Health and Human Services;

3 (7) provide for the confidentiality of test results and medical infor-  
4 mation (except information about alcohol or a controlled substance) of  
5 employees, except that this clause does not prevent the use of test re-  
6 sults for the orderly imposition of appropriate sanctions under this  
7 chapter; and

8 (8) ensure that employees are selected for tests by nondiscriminatory  
9 and impartial methods, so that no employee is harassed by being treat-  
10 ed differently from other employees in similar circumstances.

#### 11 **§ 45105. Rehabilitation**

12 (a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR  
13 CARRIERS.—The Administrator of the Federal Aviation Administration shall  
14 prescribe regulations establishing requirements for rehabilitation programs  
15 that at least provide for the identification and opportunity for treatment of  
16 employees of air carriers and foreign air carriers referred to in section  
17 45102(a)(1) of this title who need assistance in resolving problems with the  
18 use of alcohol or a controlled substance in violation of law or a United  
19 States Government regulation. Each air carrier and foreign air carrier is en-  
20 couraged to make such a program available to all its employees in addition  
21 to the employees referred to in section 45102(a)(1)(A). The Administrator  
22 shall decide on the circumstances under which employees shall be required  
23 to participate in a program. This subsection does not prevent an air carrier  
24 or foreign air carrier from establishing a program under this subsection in  
25 cooperation with another air carrier or foreign air carrier.

26 (b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINIS-  
27 TRATION.—The Administrator shall establish and maintain a rehabilitation  
28 program that at least provides for the identification and opportunity for  
29 treatment of employees of the Administration whose duties include respon-  
30 sibility for safety-sensitive functions who need assistance in resolving prob-  
31 lems with the use of alcohol or a controlled substance.

#### 32 **§ 45106. Relationship to other laws, regulations, standards,** 33 **and orders**

34 (a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS,  
35 STANDARDS, OR ORDERS.—A State or local government may not prescribe,  
36 issue, or continue in effect a law, regulation, standard, or order that is in-  
37 consistent with regulations prescribed under this chapter. However, a regu-  
38 lation prescribed under this chapter does not preempt a State criminal law  
39 that imposes sanctions for reckless conduct leading to loss of life, injury,  
40 or damage to property.

(b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In prescribing regulations under this chapter, the Administrator of the Federal Aviation Administration—

(A) shall establish only requirements applicable to foreign air carriers that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(2) The Secretaries of State and Transportation jointly shall request the governments of foreign countries that are members of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit crewmembers in international civil aviation from using alcohol or a controlled substance in violation of law or a United States Government regulation.

(c) OTHER REGULATIONS ALLOWED.—This section does not prevent the Administrator from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by airmen, crewmembers, airport security screening contract employees, air carrier employees responsible for safety-sensitive functions (as decided by the Administrator), or employees of the Administration with responsibility for safety-sensitive functions.

## CHAPTER 453—FEES

Sec.

45301. Authority to impose fees.

45302. Fees involving aircraft not providing air transportation.

45303. Maximum fees for private person services.

### § 45301. Authority to impose fees

(a) GENERAL AUTHORITY.—The Secretary of Transportation may impose a fee for an approval, test, authorization, certificate, permit, registration, transfer, or rating related to aviation that has not been approved by Congress only when the fee—

(1)(A) was in effect on January 1, 1973; and

(B) is not more than the fee in effect on January 1, 1973, adjusted in proportion to changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor between January 1, 1973, and the date the fee is imposed; or

(2) is imposed under section 45302 of this title.

(b) NONAPPLICATION.—This section does not apply to a fee for a test, authorization, certificate, permit, or rating related to an airman or repair station administered or issued outside the United States.

**§ 45302. Fees involving aircraft not providing air transportation**

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of the Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

(1) \$12 for issuing an airman's certificate to a pilot.

(2) \$25 for registering an aircraft after the transfer of ownership.

(3) \$15 for renewing an aircraft registration.

(4) \$7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

(c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the Administrator incurs expenses in carrying out chapter 441 and sections 44701–44716 of this title (except sections 44701(c), 44703(f)(2), and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

**§ 45303. Maximum fees for private person services**

The Administrator of the Federal Aviation Administration may establish maximum fees that private persons may charge for services performed under a delegation to the person under section 44702(d) of this title.

**SUBPART IV—ENFORCEMENT AND PENALTIES**

**CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS**

Sec.

46101. Complaints and investigations.

46102. Proceedings.

46103. Service of notice, process, and actions.

46104. Evidence.

46105. Regulations and orders.

46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration.

46107. Enforcement by the Attorney General.

46108. Enforcement of certificate requirements by interested persons.

46109. Joinder and intervention.

46110. Judicial review.

**§ 46101. Complaints and investigations**

(a) GENERAL.—(1) A person may file a complaint in writing with the Secretary of Transportation (or the Administrator of the Federal Aviation



Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) about a person violating this part or a requirement prescribed under this part. Except as provided in subsection (b) of this section, the Secretary or Administrator shall investigate the complaint if a reasonable ground appears to the Secretary or Administrator for the investigation.

(2) On the initiative of the Secretary of Transportation or the Administrator, as appropriate, the Secretary or Administrator may conduct an investigation, if a reasonable ground appears to the Secretary or Administrator for the investigation, about—

(A) a person violating this part or a requirement prescribed under this part; or

(B) any question that may arise under this part.

(3) The Secretary of Transportation or Administrator may dismiss a complaint without a hearing when the Secretary or Administrator is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) After notice and an opportunity for a hearing and subject to section 40105(b) of this title, the Secretary of Transportation or Administrator shall issue an order to compel compliance with this part if the Secretary or Administrator finds in an investigation under this subsection that a person is violating this part.

(b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Secretary of Transportation or Administrator shall refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of that department shall inform the Secretary of Transportation or Administrator of the action taken on the complaint, including any corrective or disciplinary action taken.

### **§ 46102. Proceedings**

(a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5 of title 5, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may conduct proceedings in a way conducive to justice and the proper dispatch of business.

(b) APPEARANCE.—A person may appear and be heard before the Secretary and the Administrator in person or by an attorney. The Secretary may appear and participate as an interested party in a proceeding the Administrator conducts under section 40113(a) of this title.

(c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Secretary and Administrator under this part shall be recorded. Proceedings before the Secretary and Administrator shall be open to the public on the request of an interested party unless the Secretary or Administrator decides that secrecy is required because of national defense.

(d) CONFLICTS OF INTEREST.—The Secretary, the Administrator, or an officer or employee of the Administration may not participate in a proceeding referred to in subsection (a) of this section in which the individual has a pecuniary interest.

### **§ 46103. Service of notice, process, and actions**

(a) DESIGNATING AGENTS.—(1) Each air carrier and foreign air carrier shall designate an agent on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may be made.

(2) The designation—

(A) shall be in writing and filed with the Secretary or Administrator;

and

(B) may be changed in the same way as originally made.

(b) SERVICE.—(1) Service may be made—

(A) by personal service;

(B) on a designated agent; or

(C) by certified or registered mail to the person to be served or the designated agent of the person.

(2) The date of service made by certified or registered mail is the date of mailing.

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the agent. If an air carrier or foreign air carrier does not have a designated agent, service may be made by posting the notice, process, or action in the office of the Secretary or Administrator.

### **§ 46104. Evidence**

(a) GENERAL.—In conducting a hearing or investigation under this part, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may—

(1) subpoena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation;

(2) administer oaths;

1 (3) examine witnesses; and

2 (4) receive evidence at a place in the United States the Secretary  
3 or Administrator designates.

4 (b) COMPLIANCE WITH SUBPENAS.—If a person disobeys a subpoena, the  
5 Secretary, the Administrator, or a party to a proceeding before the Sec-  
6 retary or Administrator may petition a court of the United States to enforce  
7 the subpoena. A judicial proceeding to enforce a subpoena under this section  
8 may be brought in the jurisdiction in which the proceeding or investigation  
9 is conducted. The court may punish a failure to obey an order of the court  
10 to comply with the subpoena as a contempt of court.

11 (c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary or  
12 Administrator may order a person to give testimony by deposition and to  
13 produce records. If a person fails to be deposed or to produce records, the  
14 order may be enforced in the same way a subpoena may be enforced under  
15 subsection (b) of this section.

16 (2) A deposition may be taken before an individual designated by the Sec-  
17 retary or Administrator and having the power to administer oaths.

18 (3) Before taking a deposition, the party or the attorney of the party pro-  
19 posing to take the deposition must give reasonable notice in writing to the  
20 opposing party or the attorney of record of that party. The notice shall state  
21 the name of the witness and the time and place of taking the deposition.

22 (4) The testimony of a person deposed under this subsection shall be  
23 under oath. The person taking the deposition shall prepare, or cause to be  
24 prepared, a transcript of the testimony taken. The transcript shall be sub-  
25 scribed by the deponent. Each deposition shall be filed promptly with the  
26 Secretary or Administrator.

27 (5) If the laws of a foreign country allow, the testimony of a witness in  
28 that country may be taken by deposition—

29 (A) by a consular officer or an individual commissioned by the Sec-  
30 retary or Administrator or agreed on by the parties by written stipula-  
31 tion filed with the Secretary or Administrator; or

32 (B) under letters rogatory issued by a court of competent jurisdic-  
33 tion at the request of the Secretary or Administrator.

34 (d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EX-  
35 PENSES.—A witness summoned before the Secretary or Administrator or  
36 whose deposition is taken under this section and the individual taking the  
37 deposition are each entitled to the same fee and mileage that the witness  
38 and individual would have been paid for those services in a court of the  
39 United States. Under regulations of the Secretary or Administrator, the  
40 Secretary or Administrator shall pay the necessary expenses incident to exe-

cuting, in another country, a commission or letter rogatory issued at the initiative of the Secretary or Administrator.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary or Administrator, an employee appointed under section 3105 of title 5 may conduct a hearing, subpoena witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary or Administrator designates. On request of a party, the Secretary or Administrator shall hear or receive argument.

#### **§ 46105. Regulations and orders**

(a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) takes effect within a reasonable time prescribed by the Secretary or Administrator. The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary or Administrator may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary or Administrator decides.

(b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary or Administrator shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order.

(c) EMERGENCIES.—When the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to this part and subchapter II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.

#### **§ 46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration**

The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may bring a civil action against a person in a district court of the United States to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the judicial district in which the person does business or the violation occurred.

**§ 46107. Enforcement by the Attorney General**

(a) CIVIL ACTIONS TO ENFORCE SECTION 40106(b).—The Attorney General may bring a civil action in a district court of the United States against a person to enforce section 40106(b) of this title. The action may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS TO ENFORCE THIS PART.—(1) On request of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator), the Attorney General may bring a civil action in an appropriate court—

(A) to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part; and

(B) to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

(2) The costs and expenses of a civil action shall be paid out of the appropriations for the expenses of the courts of the United States.

(c) PARTICIPATION OF SECRETARY OR ADMINISTRATOR.—On request of the Attorney General, the Secretary or Administrator, as appropriate, may participate in a civil action under this part.

**§ 46108. Enforcement of certificate requirements by interested persons**

An interested person may bring a civil action in a district court of the United States against a person to enforce section 41101(a)(1) of this title. The action may be brought in the judicial district in which the defendant does business or the violation occurred.

**§ 46109. Joinder and intervention**

A person interested in or affected by a matter under consideration in a proceeding before the Secretary of Transportation or civil action to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part may be joined as a party or permitted to intervene in the proceeding or civil action.

**§ 46110. Judicial review**

(a) FILING AND VENUE.—Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part may

1 apply for review of the order by filing a petition for review in the United  
 2 States Court of Appeals for the District of Columbia Circuit or in the court  
 3 of appeals of the United States for the circuit in which the person resides  
 4 or has its principal place of business. The petition must be filed not later  
 5 than 60 days after the order is issued. The court may allow the petition  
 6 to be filed after the 60th day only if there are reasonable grounds for not  
 7 filing by the 60th day.

8 (b) JUDICIAL PROCEDURES.—When a petition is filed under subsection  
 9 (a) of this section, the clerk of the court immediately shall send a copy of  
 10 the petition to the Secretary or Administrator, as appropriate. The Sec-  
 11 retary or Administrator shall file with the court a record of any proceeding  
 12 in which the order was issued, as provided in section 2112 of title 28.

13 (c) AUTHORITY OF COURT.—When the petition is sent to the Secretary  
 14 or Administrator, the court has exclusive jurisdiction to affirm, amend,  
 15 modify, or set aside any part of the order and may order the Secretary or  
 16 Administrator to conduct further proceedings. After reasonable notice to the  
 17 Secretary or Administrator, the court may grant interim relief by staying  
 18 the order or taking other appropriate action when good cause for its action  
 19 exists. Findings of fact by the Secretary or Administrator, if supported by  
 20 substantial evidence, are conclusive.

21 (d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order under  
 22 this section, the court may consider an objection to an order of the Sec-  
 23 retary or Administrator only if the objection was made in the proceeding  
 24 conducted by the Secretary or Administrator or if there was a reasonable  
 25 ground for not making the objection in the proceeding.

26 (e) SUPREME COURT REVIEW.—A decision by a court under this section  
 27 may be reviewed only by the Supreme Court under section 1254 of title 28.

## 28 **CHAPTER 463—PENALTIES**

Sec.

- 46301. Civil penalties.
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- 46303. Carrying a weapon.
- 46304. Liens on aircraft.
- 46305. Actions to recover civil penalties.
- 46306. Registration violations involving aircraft not providing air transportation.
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- 46310. Reporting and recordkeeping violations.
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- 46313. Refusing to appear or produce records.
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- 46315. Lighting violations involving transporting controlled substances by aircraft not provid-  
ing air transportation.
- 46316. General criminal penalty when specific penalty not provided.

**§ 46301. Civil penalties**

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than \$1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, section 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, subchapter II of chapter 421, chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44909(a), 44912–44915, 44932–44938, 46302, or 46303 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117) or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44912–44915, or 44932–44938 of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material; or

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation.

(4) A separate violation occurs under this subsection for each day the violation continues or, if applicable, for each flight involving the violation.

(b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, section 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, or subchapter II of chapter 421 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) Administrative Imposition of Penalties.—(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, 44932–44938, 46302, or 46303 of this title or a regulation prescribed or order issued under any of those provisions. The Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Administrator initiates if—

(A) the amount in controversy is more than \$50,000;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or



1 (D) another action has been brought for an injunction based on the  
2 same violation.

3 (5)(A) The Administrator may issue an order imposing a penalty under  
4 this subsection against an individual acting as a pilot, flight engineer, me-  
5 chanic, or repairman only after advising the individual of the charges or any  
6 reason the Administrator relied on for the proposed penalty and providing  
7 the individual an opportunity to answer the charges and be heard about why  
8 the order shall not be issued.

9 (B) An individual acting as a pilot, flight engineer, mechanic, or repair-  
10 man may appeal an order imposing a penalty under this subsection to the  
11 National Transportation Safety Board. After notice and an opportunity for  
12 a hearing on the record, the Board shall affirm, modify, or reverse the  
13 order. The Board may modify a civil penalty imposed to a suspension or  
14 revocation of a certificate.

15 (C) When conducting a hearing under this paragraph, the Board is not  
16 bound by findings of fact of the Administrator but is bound by all validly  
17 adopted interpretations of laws and regulations the Administrator carries  
18 out and of written agency policy guidance available to the public related to  
19 sanctions to be imposed under this section unless the Board finds an inter-  
20 pretation is arbitrary, capricious, or otherwise not according to law.

21 (D) When an individual files an appeal with the Board under this para-  
22 graph, the order of the Administrator is stayed.

23 (6) An individual substantially affected by an order of the Board under  
24 paragraph (5) of this subsection, or the Administrator when the Adminis-  
25 trator decides that an order of the Board will have a significant adverse im-  
26 pact on carrying out this part, may obtain judicial review of the order under  
27 section 46110 of this title. The Administrator shall be made a party to the  
28 judicial review proceedings. Findings of fact of the Board are conclusive if  
29 supported by substantial evidence.

30 (7)(A) The Administrator may impose a penalty on an individual (except  
31 an individual acting as a pilot, flight engineer, mechanic, or repairman) only  
32 after notice and an opportunity for a hearing on the record.

33 (B) In an appeal from a decision of an administrative law judge as the  
34 result of a hearing under subparagraph (A) of this paragraph, the Adminis-  
35 trator shall consider only whether—

36 (i) each finding of fact is supported by a preponderance of reliable,  
37 probative, and substantial evidence;

38 (ii) each conclusion of law is made according to applicable law, prece-  
39 dent, and public policy; and

40 (iii) the judge committed a prejudicial error that supports the  
41 appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(8) The maximum civil penalty the Administrator or Board may impose under this subsection is \$50,000.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, or 44932–44938 of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

### **§ 46302. False information**

(a) CIVIL PENALTY.—A person that, knowing the information to be false, gives, or causes to be given, under circumstances in which the information

1 reasonably may be believed, false information about an alleged attempt  
 2 being made or to be made to do an act that would violate section 46502(a),  
 3 46504, 46505, or 46506 of this title, is liable to the United States Govern-  
 4 ment for a civil penalty of not more than \$10,000 for each violation.

5 (b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation  
 6 may compromise the amount of a civil penalty imposed under subsection (a)  
 7 of this section.

8 (2) The Government may deduct the amount of a civil penalty imposed  
 9 or compromised under this section from amounts it owes the person liable  
 10 for the penalty.

### 11 **§ 46303. Carrying a weapon**

12 (a) CIVIL PENALTY.—An individual who, when on, or attempting to  
 13 board, an aircraft in, or intended for operation in, air transportation or  
 14 intrastate air transportation, has on or about the individual or the property  
 15 of the individual a concealed dangerous weapon that is or would be acces-  
 16 sible to the individual in flight is liable to the United States Government  
 17 for a civil penalty of not more than \$10,000 for each violation.

18 (b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation  
 19 may compromise the amount of a civil penalty imposed under subsection (a)  
 20 of this section.

21 (2) The Government may deduct the amount of a civil penalty imposed  
 22 or compromised under this section from amounts it owes the individual lia-  
 23 ble for the penalty.

24 (c) NONAPPLICATION.—This section does not apply to—

25 (1) a law enforcement officer of a State or political subdivision of  
 26 a State, or an officer or employee of the Government, authorized to  
 27 carry arms in an official capacity; or

28 (2) another individual the Administrator of the Federal Aviation Ad-  
 29 ministration by regulation authorizes to carry arms in an official capac-  
 30 ity.

### 31 **§ 46304. Liens on aircraft**

32 (a) AIRCRAFT SUBJECT TO LIENS.—When an aircraft is involved in a  
 33 violation referred to in section 46301(a)(1)(A)–(C), (2), or (3) of this title  
 34 and the violation is by the owner of, or individual commanding, the aircraft,  
 35 the aircraft is subject to a lien for the civil penalty.

36 (b) SEIZURE.—An aircraft subject to a lien under this section may be  
 37 seized summarily and placed in the custody of a person authorized to take  
 38 custody of it under regulations of the Secretary of Transportation (or the  
 39 Administrator of the Federal Aviation Administration with respect to avia-  
 40 tion safety duties and powers designated to be carried out by the Adminis-  
 41 trator). A report on the seizure shall be submitted to the Attorney General.

1 The Attorney General promptly shall bring a civil action in rem to enforce  
 2 the lien or notify the Secretary or Administrator that the action will not  
 3 be brought.

4 (c) RELEASE.—An aircraft seized under subsection (b) of this section  
 5 shall be released from custody when—

6 (1) the civil penalty is paid;

7 (2) a compromise amount agreed on is paid;

8 (3) the aircraft is seized under a civil action in rem to enforce the  
 9 lien;

10 (4) the Attorney General gives notice that a civil action will not be  
 11 brought under subsection (b) of this section; or

12 (5) a bond (in an amount and with a surety the Secretary or Admin-  
 13 istrator prescribes), conditioned on payment of the penalty or com-  
 14 promise, is deposited with the Secretary or Administrator.

15 **§ 46305. Actions to recover civil penalties**

16 A civil penalty under this chapter may be collected by bringing a civil ac-  
 17 tion against the person subject to the penalty, a civil action in rem against  
 18 an aircraft subject to a lien for a penalty, or both. The action shall conform  
 19 as nearly as practicable to a civil action in admiralty, regardless of the place  
 20 an aircraft in a civil action in rem is seized. However, a party may demand  
 21 a jury trial of an issue of fact in an action involving a civil penalty under  
 22 this chapter (except a penalty imposed by the Secretary of Transportation  
 23 that formerly was imposed by the Civil Aeronautics Board) if the value of  
 24 the matter in controversy is more than \$20. Issues of fact tried by a jury  
 25 may be reexamined only under common law rules.

26 **§ 46306. Registration violations involving aircraft not pro-**  
 27 **viding air transportation**

28 (a) APPLICATION.—This section applies only to aircraft not used to pro-  
 29 vide air transportation.

30 (b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c)  
 31 of this section, a person shall be fined under title 18, imprisoned for not  
 32 more than 3 years, or both, if the person—

33 (1) knowingly and willfully forges or alters a certificate authorized  
 34 to be issued under this part;

35 (2) knowingly sells, uses, attempts to use, or possesses with the in-  
 36 tent to use, such a certificate;

37 (3) knowingly and willfully displays or causes to be displayed on an  
 38 aircraft a mark that is false or misleading about the nationality or reg-  
 39 istration of the aircraft;

40 (4) obtains a certificate authorized to be issued under this part by  
 41 knowingly and willfully falsifying or concealing a material fact, making

1 a false, fictitious, or fraudulent statement, or making or using a false  
2 document knowing it contains a false, fictitious, or fraudulent state-  
3 ment or entry;

4 (5) owns an aircraft eligible for registration under section 44102 of  
5 this title and knowingly and willfully operates, attempts to operate, or  
6 allows another person to operate the aircraft when—

7 (A) the aircraft is not registered under section 44103 of this  
8 title or the certificate of registration is suspended or revoked; or

9 (B) the owner knows or has reason to know that the other per-  
10 son does not have proper authorization to operate or navigate the  
11 aircraft without registration for a period of time after transfer of  
12 ownership;

13 (6) knowingly and willfully operates or attempts to operate an air-  
14 craft eligible for registration under section 44102 of this title knowing  
15 that—

16 (A) the aircraft is not registered under section 44103 of this  
17 title;

18 (B) the certificate of registration is suspended or revoked; or

19 (C) the person does not have proper authorization to operate or  
20 navigate the aircraft without registration for a period of time after  
21 transfer of ownership;

22 (7) knowingly and willfully serves or attempts to serve in any capac-  
23 ity as an airman without an airman's certificate authorizing the indi-  
24 vidual to serve in that capacity;

25 (8) knowingly and willfully employs for service or uses in any capac-  
26 ity as an airman an individual who does not have an airman's certifi-  
27 cate authorizing the individual to serve in that capacity; or

28 (9) operates an aircraft with a fuel tank or fuel system that has been  
29 installed or modified knowing that the tank, system, installation, or  
30 modification does not comply with regulations and requirements of the  
31 Administrator of the Federal Aviation Administration.

32 (c) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—(1) In this sub-  
33 section, “controlled substance” has the same meaning given that term in  
34 section 102 of the Comprehensive Drug Abuse Prevention and Control Act  
35 of 1970 (21 U.S.C. 802).

36 (2) A person violating subsection (b) of this section shall be fined under  
37 title 18, imprisoned for not more than 5 years, or both, if the violation is  
38 related to transporting a controlled substance by aircraft or aiding or facili-  
39 tating a controlled substance violation and the transporting, aiding, or facili-  
40 tating—

1 (A) is punishable by death or imprisonment of more than one year  
2 under a law of the United States or a State; or

3 (B) provided is related to an act punishable by death or imprison-  
4 ment for more than one year under a law of the United States or a  
5 State related to a controlled substance (except a law related to simple  
6 possession of a controlled substance).

7 (3) A term of imprisonment imposed under paragraph (2) of this sub-  
8 section shall be served in addition to, and not concurrently with, any other  
9 term of imprisonment imposed on the individual.

10 (d) SEIZURE AND FORFEITURE.—(1) The Administrator of Drug En-  
11 forcement or the Commissioner of Customs may seize and forfeit under the  
12 customs laws an aircraft whose use is related to a violation of subsection  
13 (b) of this section, or to aid or facilitate a violation, regardless of whether  
14 a person is charged with the violation.

15 (2) An aircraft's use is presumed to have been related to a violation of,  
16 or to aid or facilitate a violation of—

17 (A) subsection (b)(1) of this section if the aircraft certificate of reg-  
18 istration has been forged or altered;

19 (B) subsection (b)(3) of this section if there is an external display  
20 of false or misleading registration numbers or country of registration;

21 (C) subsection (b)(4) of this section if—

22 (i) the aircraft is registered to a false or fictitious person; or

23 (ii) the application form used to obtain the aircraft certificate  
24 of registration contains a material false statement;

25 (D) subsection (b)(5) of this section if the aircraft was operated  
26 when it was not registered under section 44103 of this title; or

27 (E) subsection (b)(9) of this section if the aircraft has a fuel tank  
28 or fuel system that was installed or altered—

29 (i) in violation of a regulation or requirement of the Adminis-  
30 trator of the Federal Aviation Administration; or

31 (ii) if a certificate required to be issued for the installation or  
32 alteration is not carried on the aircraft.

33 (3) The Administrator of the Federal Aviation Administration, the Ad-  
34 ministrator of Drug Enforcement, and the Commissioner shall agree to a  
35 memorandum of understanding to establish procedures to carry out this  
36 subsection.

37 (e) RELATIONSHIP TO STATE LAWS.—This part does not prevent a State  
38 from establishing a criminal penalty, including providing for forfeiture and  
39 seizure of aircraft, for a person that—

40 (1) knowingly and willfully forges or alters an aircraft certificate of  
41 registration;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, a fraudulent aircraft certificate of registration;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft; or

(4) obtains an aircraft certificate of registration from the Administrator of the Federal Aviation Administration by—

(A) knowingly and willfully falsifying or concealing a material fact;

(B) making a false, fictitious, or fraudulent statement; or

(C) making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry.

#### **§ 46307. Violation of national defense airspace**

A person that knowingly or willfully violates section 40103(b)(3) of this title or a regulation prescribed or order issued under section 40103(b)(3) shall be fined under title 18, imprisoned for not more than one year, or both.

#### **§ 46308. Interference with air navigation**

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) with intent to interfere with air navigation in the United States, exhibits in the United States a light or signal at a place or in a way likely to be mistaken for a true light or signal established under this part or for a true light or signal used at an air navigation facility;

(2) after a warning from the Administrator of the Federal Aviation Administration, continues to maintain a misleading light or signal; or

(3) knowingly interferes with the operation of a true light or signal.

#### **§ 46309. Concession and rate violations**

(a) CRIMINAL PENALTY FOR OFFERING, GRANTING, GIVING, OR HELPING TO OBTAIN CONCESSIONS AND LOWER RATES.—An air carrier, foreign air carrier, ticket agent, or officer, agent, or employee of an air carrier, foreign air carrier, or ticket agent shall be fined under title 18 if the air carrier, foreign air carrier, ticket agent, officer, agent, or employee—

(1) knowingly and willfully offers, grants, or gives, or causes to be offered, granted, or given, a rebate or other concession in violation of this part; or

(2) by any means knowingly and willfully assists, or willingly allows, a person to obtain transportation or services subject to this part at less than the rate lawfully in effect.

(b) CRIMINAL PENALTY FOR RECEIVING REBATES, PRIVILEGES, AND FACILITIES.—A person shall be fined under title 18 if the person by any means—

(1) knowingly and willfully solicits, accepts, or receives a rebate of a part of a rate lawfully in effect for the foreign air transportation of property, or a service related to the foreign air transportation; or

(2) knowingly solicits, accepts, or receives a privilege or facility related to a matter the Secretary of Transportation requires be specified in a currently effective tariff applicable to the foreign air transportation of property.

#### **§ 46310. Reporting and recordkeeping violations**

(a) GENERAL CRIMINAL PENALTY.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18 for intentionally—

(1) failing to make a report or keep a record under this part;

(2) falsifying, mutilating, or altering a report or record under this part; or

(3) filing a false report or record under this part.

(b) SAFETY REGULATION CRIMINAL PENALTY.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18, imprisoned for not more than 5 years, or both, for intentionally falsifying or concealing a material fact, or inducing reliance on a false statement of material fact, in a report or record under section 44701(a) or (b) or 44702–44716 of this title.

#### **§ 46311. Unlawful disclosure of information**

(a) CRIMINAL PENALTY.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator, or an officer or employee of the Secretary or Administrator shall be fined under title 18, imprisoned for not more than 2 years, or both, if the Secretary, Administrator, officer, or employee knowingly and willfully discloses information that—

(1) the Secretary, Administrator, officer, or employee acquires when inspecting the records of an air carrier; or

(2) is withheld from public disclosure under section 40115 of this title.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

(1) the officer or employee is directed by the Secretary or Administrator to disclose information that the Secretary or Administrator had ordered withheld; or

(2) the Secretary, Administrator, officer, or employee is directed by a court of competent jurisdiction to disclose the information.



(c) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize the Secretary or Administrator to withhold information from a committee of Congress authorized to have the information.

**§ 46312. Transporting hazardous material**

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, in violation of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this part—

(1) willfully delivers, or causes to be delivered, property containing hazardous material to an air carrier or to an operator of a civil aircraft for transportation in air commerce; or

(2) recklessly causes the transportation in air commerce of the property.

**§ 46313. Refusing to appear or produce records**

A person not obeying a subpoena or requirement of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) to appear and testify or produce records shall be fined under title 18, imprisoned for not more than one year, or both.

**§ 46314. Entering aircraft or airport area in violation of security requirements**

(a) PROHIBITION.—A person may not knowingly and willfully enter, in violation of security requirements prescribed under section 44901, 44903(b) or (c), or 44906 of this title, an aircraft or an airport area that serves an air carrier or foreign air carrier.

(b) CRIMINAL PENALTY.—(1) A person violating subsection (a) of this section shall be fined under title 18, imprisoned for not more than one year, or both.

(2) A person violating subsection (a) of this section with intent to commit, in the aircraft or airport area, a felony under a law of the United States or a State shall be fined under title 18, imprisoned for not more than 10 years, or both.

**§ 46315. Lighting violations involving transporting controlled substances by aircraft not providing air transportation**

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) CRIMINAL PENALTY.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if—

(1) the person knowingly and willfully operates an aircraft in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration related to the display of navigation or anti-collision lights;

(2) the person is knowingly transporting a controlled substance by aircraft or aiding or facilitating a controlled substance offense; and

(3) the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment for more than one year under a law of the United States or a State; or

(B) is provided in connection with an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

**§ 46316. General criminal penalty when specific penalty not provided**

(a) CRIMINAL PENALTY.—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part, or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), chapter 445, and sections 44701(a) and (b), 44702–44716, 44901, 44903(b) and (c), 44905, 44906, 44912–44915, and 44932–44938 of this title.

**CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES**

Sec.

46501. Definitions.

46502. Aircraft piracy.

46503. Death penalty sentencing procedure for aircraft piracy.

46504. Interference with flight crew members and attendants.

46505. Carrying a weapon or explosive on an aircraft.

46506. Application of certain criminal laws to acts on aircraft.

46507. False information and threats.

**§ 46501. Definitions**

In this chapter—

(1) “aircraft in flight” means an aircraft from the moment all external doors are closed following boarding—

1 (A) through the moment when one external door is opened to  
 2 allow passengers to leave the aircraft; or

3 (B) until, if a forced landing, competent authorities take over  
 4 responsibility for the aircraft and individuals and property on the  
 5 aircraft.

6 (2) “special aircraft jurisdiction of the United States” includes any  
 7 of the following aircraft in flight:

8 (A) a civil aircraft of the United States.

9 (B) an aircraft of the armed forces of the United States.

10 (C) another aircraft in the United States.

11 (D) another aircraft outside the United States—

12 (i) that has its next scheduled destination or last place of  
 13 departure in the United States, if the aircraft next lands in  
 14 the United States;

15 (ii) on which an individual commits an offense (as defined  
 16 in the Convention for the Suppression of Unlawful Seizure of  
 17 Aircraft) if the aircraft lands in the United States with the  
 18 individual still on the aircraft; or

19 (iii) against which an individual commits an offense (as de-  
 20 fined in subsection (d) or (e) of article I, section I of the Con-  
 21 vention for the Suppression of Unlawful Acts against the  
 22 Safety of Civil Aviation) if the aircraft lands in the United  
 23 States with the individual still on the aircraft.

24 (E) any other aircraft leased without crew to a lessee whose  
 25 principal place of business is in the United States or, if the lessee  
 26 does not have a principal place of business, whose permanent resi-  
 27 dence is in the United States.

28 (3) an individual commits an offense (as defined in the Convention  
 29 for the Suppression of Unlawful Seizure of Aircraft) when the individ-  
 30 ual, when on an aircraft in flight—

31 (A) by any form of intimidation, unlawfully seizes, exercises  
 32 control of, or attempts to seize or exercise control of, the aircraft;  
 33 or

34 (B) is an accomplice of an individual referred to in subclause  
 35 (A) of this clause.

### 36 **§ 46502. Aircraft piracy**

37 (a) IN SPECIAL AIRCRAFT JURISDICTION.—(1) In this subsection—

38 (A) “aircraft piracy” means seizing or exercising control of an air-  
 39 craft in the special aircraft jurisdiction of the United States by force,  
 40 violence, threat of force or violence, or any form of intimidation, and  
 41 with wrongful intent.

1 (B) an attempt to commit aircraft piracy is in the special aircraft  
 2 jurisdiction of the United States although the aircraft is not in flight  
 3 at the time of the attempt if the aircraft would have been in the special  
 4 aircraft jurisdiction of the United States had the aircraft piracy been  
 5 completed.

6 (2) An individual committing or attempting to commit aircraft piracy—

7 (A) shall be imprisoned for at least 20 years; or

8 (B) if the death of another individual results from the commission  
 9 or attempt, shall be put to death or imprisoned for life.

10 (b) OUTSIDE SPECIAL AIRCRAFT JURISDICTION.—(1) An individual com-  
 11 mitting an offense (as defined in the Convention for the Suppression of Un-  
 12 lawful Seizure of Aircraft) on an aircraft in flight outside the special air-  
 13 craft jurisdiction of the United States and later found in the United  
 14 States—

15 (A) shall be imprisoned for at least 20 years; or

16 (B) if the death of another individual results from the commission  
 17 or attempt, shall be put to death or imprisoned for life.

18 (2) This subsection applies only if the place of takeoff or landing of the  
 19 aircraft on which the individual commits the offense is located outside the  
 20 territory of the country of registration of the aircraft.

21 **§ 46503. Death penalty sentencing procedure for aircraft pi-**  
 22 **racy**

23 (a) GOVERNMENT STIPULATIONS.—An individual convicted of violating  
 24 section 46502 of this title may not be sentenced to death if the United  
 25 States Government stipulates that at least one of the mitigating factors  
 26 specified in subsection (c)(1) of this section exists or none of the aggravat-  
 27 ing factors specified in subsection (c)(2) of this section exists. If the Gov-  
 28 ernment does not stipulate, the judge presiding at the trial or accepting the  
 29 guilty plea of the individual shall hold a separate hearing to decide on the  
 30 punishment to be imposed.

31 (b) PUNISHMENT HEARINGS.—(1) The hearing under this section shall  
 32 be conducted—

33 (A) before the jury that found the defendant guilty;

34 (B) before a jury impaneled for the hearing when—

35 (i) the defendant was convicted by a guilty plea;

36 (ii) the defendant was convicted by a judge without a jury; or

37 (iii) the jury finding the defendant guilty was discharged by the  
 38 judge for good cause; or

39 (C) before the judge, on motion of the defendant and with the ap-  
 40 proval of the judge and the Government.

(2) At the hearing, the judge shall disclose to the defendant or counsel for the defendant all material contained in any presentence report, except material the judge decides is required to be withheld to protect human life or national security. Presentence information withheld from the defendant may not be considered in deciding whether the factors specified in subsection (c) of this section exist.

(3) Information relevant to the mitigating factors specified in subsection (c)(1) of this section may be presented by the Government or the defendant without regard to the rules governing the admissibility of evidence at criminal trials. The burden of establishing the existence of a mitigating factor specified in subsection (c)(1) is on the defendant.

(4) Information relevant to the aggravating factors specified in subsection (c)(2) of this section is admissible only under rules governing the admissibility of evidence at criminal trials. The burden of establishing the existence of an aggravating factor specified in subsection (c)(2) is on the Government.

(5) The Government and the defendant may rebut information presented at the hearing. They shall be given an opportunity to present arguments on the adequacy of the information to establish the existence of the factors specified in subsection (c) of this section.

(c) MITIGATING AND AGGRAVATING FACTORS.—(1) The judge may not impose the death penalty on a defendant if the jury or, if there is no jury, the judge finds under this section that at the time of the violation of section 46502 of this title—

(A) the defendant was not yet 18 years of age;

(B) the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired significantly, but the capacity was not impaired sufficiently to be a defense to prosecution;

(C) the defendant was under unusual and substantial duress, but the duress was not sufficient to be a defense to prosecution;

(D) the defendant was a principal (as defined in section 2(a) of title 18) in a violation committed by another individual, but the participation of the defendant was relatively minor, although not sufficiently minor to be a defense to prosecution; or

(E) the defendant reasonably could not have foreseen that the conduct of the defendant in the violation would cause or create a grave risk of causing death to another individual.

(2) If none of the factors specified in paragraph (1) of this subsection exists, the judge shall impose the death penalty on the defendant if the jury or, if there is no jury, the judge finds under this section that—

1 (A) the death of another individual resulted from the violation after  
 2 the defendant had seized or exercised control of the aircraft; or

3 (B) the death of another individual resulted from the violation and—

4 (i) the defendant has been convicted of another United States  
 5 or State offense (committed before or at the time of the violation)  
 6 for which punishment of life imprisonment or death could be im-  
 7 posed;

8 (ii) the defendant has been convicted of at least 2 United States  
 9 or State offenses with a penalty of more than one year of impris-  
 10 onment (committed on different occasions before the time of the  
 11 violation) that involved inflicting serious bodily injury on another  
 12 individual;

13 (iii) in committing the violation, the defendant knowingly cre-  
 14 ated a grave risk of death to an individual in addition to the indi-  
 15 vidual whose death resulted from the violation; or

16 (iv) the defendant committed the violation in an especially hei-  
 17 nous, cruel, or depraved manner.

18 (d) DEATH PENALTY REQUIREMENTS.—(1) If the jury or, if there is no  
 19 jury, the judge finds by a preponderance of the information that none of  
 20 the mitigating factors specified in subsection (c)(1) of this section exists and  
 21 that at least one of the aggravating factors specified in subsection (c)(2)  
 22 of this section exists, the judge shall impose the death penalty on the de-  
 23 fendant. If the jury or judge finds that at least one of the mitigating factors  
 24 specified in subsection (c)(1) exists, or that none of the aggravating factors  
 25 specified in subsection (c)(2) exists, the judge may not impose the death  
 26 penalty on the defendant but shall impose another penalty provided for the  
 27 defendant's violation of section 46502 of this title.

28 (2) The jury or, if there is no jury, the judge shall return a special verdict  
 29 containing findings on whether each of the factors specified in subsection  
 30 (c) of this section exists.

31 **§ 46504. Interference with flight crew members and attend-**  
 32 **ants**

33 An individual on an aircraft in the special aircraft jurisdiction of the  
 34 United States who, by assaulting or intimidating a flight crew member or  
 35 flight attendant of the aircraft, interferes with the performance of the duties  
 36 of the member or attendant or lessens the ability of the member or attend-  
 37 ant to perform those duties, shall be fined under title 18, imprisoned for  
 38 not more than 20 years, or both. However, if a dangerous weapon is used  
 39 in assaulting or intimidating the member or attendant, the individual shall  
 40 be imprisoned for any term of years or for life.

**§ 46505. Carrying a weapon or explosive on an aircraft**

(a) DEFINITION.—In this section, “loaded firearm” means a starter gun or a weapon designed or converted to expel a projectile through an explosive, that has a cartridge, a detonator, or powder in the chamber, magazine, cylinder, or clip.

(b) GENERAL CRIMINAL PENALTY.—An individual shall be fined under title 18, imprisoned for not more than one year, or both, if the individual—

(1) when on, or attempting to get on, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight;

(2) has placed, attempted to place, or attempted to have placed a loaded firearm on that aircraft in property not accessible to passengers in flight; or

(3) has on or about the individual, or has placed, attempted to place, or attempted to have placed on that aircraft, an explosive or incendiary device.

(c) CRIMINAL PENALTY INVOLVING DISREGARD FOR HUMAN LIFE.—An individual who willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, violates subsection (b) of this section, shall be fined under title 18, imprisoned for not more than 5 years, or both.

(d) NONAPPLICATION.—Subsection (b)(1) of this section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

(2) another individual the Administrator of the Federal Aviation Administration by regulation authorizes to carry a dangerous weapon in air transportation or intrastate air transportation; or

(3) an individual transporting a weapon (except a loaded firearm) in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon.

**§ 46506. Application of certain criminal laws to acts on aircraft**

An individual on an aircraft in the special aircraft jurisdiction of the United States who commits an act that—

(1) if committed in the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18) would violate section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter

109A of title 18, shall be fined under title 18, imprisoned under that section or chapter, or both; or

(2) if committed in the District of Columbia would violate section 9 of the Act of July 29, 1892 (D.C. Code §22-1112), shall be fined under title 18, imprisoned under section 9 of the Act, or both.

**§46507. False information and threats**

An individual shall be fined under title 18, imprisoned for not more than 5 years, or both, if the individual—

(1) knowing the information to be false, willfully and maliciously or with reckless disregard for the safety of human life, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title; or

(2)(A) threatens to violate section 46502(a), 46504, 46505, or 46506 of this title, or causes a threat to violate any of those sections to be made; and

(B) appears ready and willing to carry out the threat.

**PART B—AIRPORT DEVELOPMENT AND NOISE**

**CHAPTER 471—AIRPORT DEVELOPMENT**

**SUBCHAPTER I—AIRPORT IMPROVEMENT**

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## SUBCHAPTER I—AIRPORT IMPROVEMENT

**§47101. Policies**

(a) GENERAL.—It is the policy of the United States—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively;

(6) that airport development projects under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft; and

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities.

(b) NATIONAL TRANSPORTATION POLICY.—(1) It is a goal of the United States to develop a national intermodal transportation system that transports passengers and property in an efficient manner. The future economic direction of the United States depends on its ability to confront directly the enormous challenges of the global economy, declining productivity growth,

1 energy vulnerability, air pollution, and the need to rebuild the infrastructure  
2 of the United States.

3 (2) United States leadership in the world economy, the expanding wealth  
4 of the United States, the competitiveness of the industry of the United  
5 States, the standard of living, and the quality of life are at stake.

6 (3) A national intermodal transportation system is a coordinated, flexible  
7 network of diverse but complementary forms of transportation that trans-  
8 ports passengers and property in the most efficient manner. By reducing  
9 transportation costs, these intermodal systems will enhance the ability of the  
10 industry of the United States to compete in the global marketplace.

11 (4) All forms of transportation, including aviation and other transpor-  
12 tation systems of the future, will be full partners in the effort to reduce  
13 energy consumption and air pollution while promoting economic develop-  
14 ment.

15 (5) An intermodal transportation system consists of transportation hubs  
16 that connect different forms of appropriate transportation and provides  
17 users with the most efficient means of transportation and with access to  
18 commercial centers, business locations, population centers, and the vast  
19 rural areas of the United States, as well as providing links to other forms  
20 of transportation and to intercity connections.

21 (6) Intermodality and flexibility are paramount issues in the process of  
22 developing an integrated system that will obtain the optimum yield of Unit-  
23 ed States resources.

24 (7) The United States transportation infrastructure must be reshaped to  
25 provide the economic underpinnings for the United States to compete in the  
26 21st century global economy. The United States can no longer rely on the  
27 sheer size of its economy to dominate international economic rivals and  
28 must recognize fully that its economy is no longer a separate entity but is  
29 part of the global marketplace. The future economic prosperity of the Unit-  
30 ed States depends on its ability to compete in an international marketplace  
31 that is teeming with competitors but in which a full one-quarter of the eco-  
32 nomic activity of the United States takes place.

33 (8) The United States must make a national commitment to rebuild its  
34 infrastructure through development of a national intermodal transportation  
35 system. The United States must provide the foundation for its industries  
36 to improve productivity and their ability to compete in the global economy  
37 with a system that will transport passengers and property in an efficient  
38 manner.

39 (c) CAPACITY EXPANSION AND NOISE ABATEMENT.—It is in the public  
40 interest to recognize the effects of airport capacity expansion projects on  
41 aircraft noise. Efforts to increase capacity through any means can have an

1 impact on surrounding communities. Noncompatible land uses around air-  
 2 ports must be reduced and efforts to mitigate noise must be given a high  
 3 priority.

4 (d) CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.—Each  
 5 airport and airway program should be carried out consistently with section  
 6 40101(a), (b), (d), and (f) of this title to foster competition, prevent unfair  
 7 methods of competition in air transportation, maintain essential air trans-  
 8 portation, and prevent unjust and discriminatory practices, including as the  
 9 practices may be applied between categories and classes of aircraft.

10 (e) ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.—This  
 11 subchapter should be carried out to provide adequate navigation aids and  
 12 airport facilities for places at which scheduled commercial air service is pro-  
 13 vided. The facilities provided may include—

14 (1) reliever airports; and

15 (2) heliports designated by the Secretary of Transportation to relieve  
 16 congestion at commercial service airports by diverting aircraft pas-  
 17 sengers from fixed-wing aircraft to helicopter carriers.

18 (f) MAXIMUM USE OF SAFETY FACILITIES.—This subchapter should be  
 19 carried out consistently with a comprehensive airspace system plan, giving  
 20 highest priority to commercial service airports, to maximize the use of safety  
 21 facilities, including installing, operating, and maintaining, to the extent pos-  
 22 sible with available money and considering other safety needs—

23 (1) electronic or visual vertical guidance on each runway;

24 (2) grooving or friction treatment of each primary and secondary  
 25 runway;

26 (3) distance-to-go signs for each primary and secondary runway;

27 (4) a precision approach system, a vertical visual guidance system,  
 28 and a full approach light system for each primary runway;

29 (5) a nonprecision instrument approach for each secondary runway;

30 (6) runway end identifier lights on each runway that does not have  
 31 an approach light system;

32 (7) a surface movement radar system at each category III airport;

33 (8) a taxiway lighting and sign system;

34 (9) runway edge lighting and marking; and

35 (10) radar approach coverage for each airport terminal area.

36 (g) COOPERATION.—To carry out the policy of subsection (a)(5) of this  
 37 section, the Secretary of Transportation shall cooperate with State and local  
 38 officials in developing airport plans and programs that are based on overall  
 39 transportation needs. The airport plans and programs shall be developed in  
 40 coordination with other transportation planning and considering comprehen-  
 41 sive long-range land-use plans and overall social, economic, environmental,

1 system performance, and energy conservation objectives. The process of de-  
 2 veloping airport plans and programs shall be continuing, cooperative, and  
 3 comprehensive to the degree appropriate to the complexity of the transpor-  
 4 tation problems.

5 (h) CONSULTATION.—To carry out the policy of subsection (a)(6) of this  
 6 section, the Secretary of Transportation shall consult with the Secretary of  
 7 the Interior and the Administrator of the Environmental Protection Agency  
 8 about any project included in a project grant application involving the loca-  
 9 tion of an airport or runway, or a major runway extension, that may have  
 10 a significant effect on—

- 11 (1) natural resources, including fish and wildlife;
- 12 (2) natural, scenic, and recreation assets;
- 13 (3) water and air quality; or
- 14 (4) another factor affecting the environment.

#### 15 **§ 47102. Definitions**

16 In this subchapter—

- 17 (1) “air carrier airport” means a public airport regularly served by—

18 (A) an air carrier certificated by the Secretary of Transpor-  
 19 tation under section 41102 of this title (except a charter air car-  
 20 rier); or

21 (B) at least one air carrier—

22 (i) operating under an exemption from section 41101(a)(1)  
 23 of this title that the Secretary grants; and

24 (ii) having at least 2,500 passenger boardings at the air-  
 25 port during the prior calendar year.

- 26 (2) “airport”—

27 (A) means—

28 (i) an area of land or water used or intended to be used  
 29 for the landing and taking off of aircraft;

30 (ii) an appurtenant area used or intended to be used for  
 31 airport buildings or other airport facilities or rights of way;  
 32 and

33 (iii) airport buildings and facilities located in any of those  
 34 areas; and

35 (B) includes a heliport.

- 36 (3) “airport development” means the following activities, if under-  
 37 taken by the sponsor, owner, or operator of a public-use airport:

38 (A) constructing, repairing, or improving a public-use airport,  
 39 including—

40 (i) removing, lowering, relocating, marking, and lighting an  
 41 airport hazard; and

(ii) preparing a plan or specification, including carrying out a field investigation.

(B) acquiring for, or installing at, a public-use airport—

(i) a navigation aid or another aid (including a precision approach system) used by aircraft for landing at or taking off from the airport, including preparing the site as required by the acquisition or installation;

(ii) safety or security equipment the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport;

(iii) equipment to remove snow, to measure runway surface friction, or for aviation-related weather reporting;

(iv) firefighting and rescue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than 20 passenger seats;

(v) aircraft deicing equipment and structures (except aircraft deicing fluids and storage facilities for the equipment and fluids); and

(vi) interactive training systems.

(C) acquiring an interest in land or airspace, including land for future airport development, that is needed—

(i) to carry out airport development described in subclause (A) or (B) of this clause; or

(ii) to remove or mitigate an existing airport hazard or prevent or limit the creation of a new airport hazard.

(D) acquiring land for, or constructing, a burn area training structure on or off the airport to provide live fire drill training for aircraft rescue and firefighting personnel required to receive the training under regulations the Secretary prescribes, including basic equipment and minimum structures to support the training under standards the Administrator of the Federal Aviation Administration prescribes.

(E) relocating after December 31, 1991, an air traffic control tower and any navigational aid (including radar) if the relocation is necessary to carry out a project approved by the Secretary under this subchapter.

(F) constructing, reconstructing, repairing, or improving an airport, or purchasing capital equipment for an airport, if paid for by a grant under this subchapter and necessary for compliance with the responsibilities of the operator or owner of the airport

under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), except constructing or purchasing capital equipment that would benefit primarily a revenue-producing area of the airport used by a nonaeronautical business.

(G) acquiring land for, or work necessary to construct, a pad suitable for deicing aircraft before takeoff at a commercial service airport, including constructing or reconstructing paved areas, drainage collection structures, treatment and discharge systems, appropriate lighting, paved access for deicing vehicles and aircraft, but not including acquiring aircraft deicing fluids or constructing or reconstructing storage facilities for aircraft deicing equipment or fluids.

(4) “airport hazard” means a structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport.

(5) “airport planning” means planning as defined by regulations the Secretary prescribes and includes integrated airport system planning.

(6) “amount made available under section 48103 of this title” means the amount authorized for grants under section 48103 of this title as reduced by any law enacted after September 3, 1982.

(7) “commercial service airport” means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.

(8) “integrated airport system planning” means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development needed in a specific area to establish a viable, balanced, and integrated system of public-use airports, including—

(A) identifying system needs;

(B) developing an estimate of systemwide development costs;

(C) conducting studies, surveys, and other planning actions, including those related to airport access, needed to decide which aeronautical needs should be met by a system of airports; and

(D) standards prescribed by a State, except standards for safety of approaches, for airport development at nonprimary public-use airports.

(9) “landed weight” means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the Secretary determines under regulations the Secretary prescribes.

(10) “passenger boardings”—

(A) means revenue passenger boardings on an aircraft in service in air commerce as the Secretary determines under regulations the Secretary prescribes; and

(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.

(11) “primary airport” means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.

(12) “project” means a project, separate projects included in one project grant application, or all projects to be undertaken at an airport in a fiscal year, to achieve airport development or airport planning.

(13) “project cost” means a cost involved in carrying out a project.

(14) “project grant” means a grant of money the Secretary makes to a sponsor to carry out at least one project.

(15) “public agency” means—

(A) a State or political subdivision of a State;

(B) a tax-supported organization; or

(C) an Indian tribe or pueblo.

(16) “public airport” means an airport used or intended to be used for public purposes—

(A) that is under the control of a public agency; and

(B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.

(17) “public-use airport” means—

(A) a public airport; or

(B) a privately-owned airport used or intended to be used for public purposes that is—

(i) a reliever airport; or

(ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.

(18) “reliever airport” means an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.

(19) “sponsor” means—

(A) a public agency that submits to the Secretary under this subchapter an application for financial assistance; and

(B) a private owner of a public-use airport that submits to the Secretary under this subchapter an application for financial assistance for the airport.

(20) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

### **§ 47103. National plan of integrated airport systems**

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The Secretary of Transportation shall maintain the plan for developing public-use airports in the United States, named “the national plan of integrated airport systems”. The plan shall include the kind and estimated cost of eligible airport development the Secretary of Transportation considers necessary to provide a safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service. Airport development included in the plan may not be limited to meeting the needs of any particular classes or categories of public-use airports. In maintaining the plan, the Secretary of Transportation shall consider the needs of each segment of civil aviation and the relationship of each airport to—

(1) the rest of the transportation system in the particular area;

(2) forecasted technological developments in aeronautics; and

(3) forecasted developments in other modes of intercity transportation.

(b) SPECIFIC REQUIREMENTS.—In maintaining the plan, the Secretary of Transportation shall—

(1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;

(2) consider tall structures that reduce safety or airport capacity; and

(3) make every reasonable effort to address the needs of air cargo operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations, and rotary wing aircraft operations.

(c) AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FACILITIES.—To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the Secretary of Transportation under subsection (a) of this section, the



1 Secretary of Defense shall indicate the extent to which domestic military  
2 airports and airport facilities are available for civil use.

3 (d) PUBLICATION.—The Secretary of Transportation shall publish the  
4 status of the plan every 2 years.

5 **§47104. Project grant authority**

6 (a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide  
7 system of public-use airports that meets the present and future needs of  
8 civil aeronautics, the Secretary of Transportation may make project grants  
9 under this subchapter from the Airport and Airway Trust Fund.

10 (b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to  
11 make grants from amounts made available under section 48103 of this title  
12 as soon as the amounts are apportioned under section 47114(c) and (d)(2)  
13 of this title.

14 (c) EXPIRATION OF AUTHORITY.—After September 30, 1993, the Sec-  
15 retary may not incur obligations under subsection (b) of this section, except  
16 for obligations of amounts remaining available after that date under section  
17 47117(b) of this title.

18 **§47105. Project grant applications**

19 (a) SUBMISSION AND CONSULTATION.—(1) An application for a project  
20 grant under this subchapter may be submitted to the Secretary of Transpor-  
21 tation by—

22 (A) a sponsor; or

23 (B) a State, as the only sponsor, for an airport development project  
24 benefitting at least 2 airports in the State or for airport planning for  
25 similar projects for at least 2 airports in the State if—

26 (i) the sponsor of each airport gives written consent that the  
27 State be the applicant;

28 (ii) the Secretary is satisfied there is administrative merit and  
29 aeronautical benefit in the State being the sponsor; and

30 (iii) an acceptable agreement exists that ensures that the State  
31 will comply with appropriate grant conditions and other assur-  
32 ances the Secretary requires.

33 (2) Before deciding to undertake an airport development project at an  
34 airport under this subchapter, a sponsor shall consult with the airport users  
35 that will be affected by the project.

36 (3) This subsection does not authorize a public agency that is subject to  
37 the laws of a State to apply for a project grant in violation of a law of the  
38 State.

39 (b) CONTENTS AND FORM.—An application for a project grant under this  
40 subchapter—

41 (1) shall describe the project proposed to be undertaken;

(2) may propose a project only for a public-use airport included in the current national plan of integrated airport systems;

(3) may propose airport development only if the development complies with standards the Secretary prescribes or approves, including standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches; and

(4) shall be in the form and contain other information the Secretary prescribes.

(c) STATE STANDARDS FOR AIRPORT DEVELOPMENT.—The Secretary may approve standards (except standards for safety of approaches) that a State prescribes for airport development at nonprimary public-use airports in the State. On approval under this subsection, a State's standards apply to the nonprimary public-use airports in the State instead of the comparable standards prescribed by the Secretary under subsection (b)(3) of this section. The Secretary, or the State with the approval of the Secretary, may revise standards approved under this subsection.

(d) CERTIFICATION OF COMPLIANCE.—The Secretary may require a sponsor to certify that the sponsor will comply with this subchapter in carrying out the project. The Secretary may rescind the acceptance of a certification at any time. This subsection does not affect an obligation or responsibility of the Secretary under another law of the United States.

(e) NOTIFICATION.—The sponsor of an airport for which an amount is apportioned under section 47114(c) of this title shall notify the Secretary of the fiscal year in which the sponsor intends to submit a project grant application for the apportioned amount. The notification shall be given by the time and contain the information the Secretary prescribes.

**§ 47106. Project grant application approval conditioned on satisfaction of project requirements**

(a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay; and

(5) the sponsor has authority to carry out the project as proposed.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) ENVIRONMENTAL REQUIREMENTS.—(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that—

(i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out; and

(ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the Secretary about a proposed project;

(B) only if the chief executive officer of the State in which the project will be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards, except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if—

(i) the State has not approved any applicable State or local standards; and

(ii) the Administrator has prescribed applicable standards; and

(C) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative

1 to the project exists and that every reasonable step has been taken to  
2 minimize the adverse effect.

3 (2) The Secretary may approve an application under this subchapter for  
4 an airport development project that does not involve the location of an air-  
5 port or runway, or a major runway extension, at an existing airport without  
6 requiring an environmental impact statement related to noise for the project  
7 if—

8 (A) completing the project would allow operations at the airport in-  
9 volving aircraft complying with the noise standards prescribed for  
10 “stage 2” aircraft in section 36.1 of title 14, Code of Federal Regula-  
11 tions, to replace existing operations involving aircraft that do not com-  
12 ply with those standards; and

13 (B) the project meets the other requirements under this subchapter.

14 (3) At the Secretary’s request, the sponsor shall give the Secretary a copy  
15 of the transcript of any hearing held under paragraph (1)(A) of this sub-  
16 section.

17 (4)(A) Notice of certification or of refusal to certify under paragraph  
18 (1)(B) of this subsection shall be provided to the Secretary not later than  
19 60 days after the Secretary receives the application.

20 (B) The Secretary shall condition approval of the application on compli-  
21 ance with the applicable standards during construction and operation.

22 (5) The Secretary may make a finding under paragraph (1)(C) of this  
23 subsection only after completely reviewing the matter. The review and find-  
24 ing must be a matter of public record.

25 (d) GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION AP-  
26 PROVAL.—(1) In this subsection, “general aviation airport” means a public  
27 airport that is not an air carrier airport.

28 (2) The Secretary may approve an application under this subchapter for  
29 an airport development project included in a project grant application in-  
30 volving the construction or extension of a runway at a general aviation air-  
31 port located on both sides of a boundary line separating 2 counties within  
32 a State only if, before the application is submitted to the Secretary, the  
33 project is approved by the governing body of each village incorporated under  
34 the laws of the State and located entirely within 5 miles of the nearest  
35 boundary of the airport.

36 (e) WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval  
37 of an application under this subchapter for amounts apportioned under sec-  
38 tion 47114(c) and (e) of this title for violating an assurance or requirement  
39 of this subchapter only if—

40 (A) the Secretary provides the sponsor an opportunity for a hearing;  
41 and

1 (B) not later than 180 days after the later of the date of the applica-  
 2 tion or the date the Secretary discovers the noncompliance, the Sec-  
 3 retary finds that a violation has occurred.

4 (2) The 180-day period may be extended by—

5 (A) agreement between the Secretary and the sponsor; or

6 (B) the hearing officer if the officer decides an extension is necessary  
 7 because the sponsor did not follow the schedule the officer established.

8 (3) A person adversely affected by an order of the Secretary withholding  
 9 approval may obtain review of the order by filing a petition in the United  
 10 States Court of Appeals for the District of Columbia Circuit or in the court  
 11 of appeals of the United States for the circuit in which the project is lo-  
 12 cated. The action must be brought not later than 60 days after the order  
 13 is served on the petitioner.

14 **§47107. Project grant application approval conditioned on**  
 15 **assurances about airport operations**

16 (a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation  
 17 may approve a project grant application under this subchapter for an air-  
 18 port development project only if the Secretary receives written assurances,  
 19 satisfactory to the Secretary, that—

20 (1) the airport will be available for public use on reasonable condi-  
 21 tions and without unjust discrimination;

22 (2) air carriers making similar use of the airport will be subject to  
 23 substantially comparable charges—

24 (A) for facilities directly and substantially related to providing  
 25 air transportation; and

26 (B) regulations and conditions, except for differences based on  
 27 reasonable classifications, such as between—

28 (i) tenants and nontenants; and

29 (ii) signatory and nonsignatory carriers;

30 (3) the airport operator will not withhold unreasonably the classifica-  
 31 tion or status of tenant or signatory from an air carrier that assumes  
 32 obligations substantially similar to those already imposed on air car-  
 33 riers of that classification or status;

34 (4) a person providing, or intending to provide, aeronautical services  
 35 to the public will not be given an exclusive right to use the airport,  
 36 with a right given to only one fixed-base operator to provide services  
 37 at an airport deemed not to be an exclusive right if—

38 (A) the right would be unreasonably costly, burdensome, or im-  
 39 practical for more than one fixed-base operator to provide the  
 40 services; and

1 (B) allowing more than one fixed-base operator to provide the  
2 services would require reducing the space leased under an existing  
3 agreement between the one fixed-base operator and the airport  
4 owner or operator;

5 (5) fixed-base operators similarly using the airport will be subject to  
6 the same charges;

7 (6) an air carrier using the airport may service itself or use any  
8 fixed-base operator allowed by the airport operator to service any car-  
9 rier at the airport;

10 (7) the airport and facilities on or connected with the airport will  
11 be operated and maintained suitably, with consideration given to cli-  
12 matic and flood conditions;

13 (8) a proposal to close the airport temporarily for a nonaeronautical  
14 purpose must first be approved by the Secretary;

15 (9) appropriate action will be taken to ensure that terminal airspace  
16 required to protect instrument and visual operations to the airport (in-  
17 cluding operations at established minimum flight altitudes) will be  
18 cleared and protected by mitigating existing, and preventing future,  
19 airport hazards;

20 (10) appropriate action, including the adoption of zoning laws, has  
21 been or will be taken to the extent reasonable to restrict the use of land  
22 next to or near the airport to uses that are compatible with normal air-  
23 port operations;

24 (11) each of the airport's facilities developed with financial assist-  
25 ance from the United States Government and each of the airport's fa-  
26 cilities usable for the landing and taking off of aircraft always will be  
27 available without charge for use by Government aircraft in common  
28 with other aircraft, except that if the use is substantial, the Govern-  
29 ment may be charged a reasonable share, proportionate to the use, of  
30 the cost of operating and maintaining the facility used;

31 (12) the airport owner or operator will provide, without charge to the  
32 Government, property interests of the sponsor in land or water areas  
33 or buildings that the Secretary decides are desirable for, and that will  
34 be used for, constructing at Government expense, facilities for carrying  
35 out activities related to air traffic control or navigation;

36 (13) the airport owner or operator will maintain a schedule of  
37 charges for use of facilities and services at the airport—

38 (A) that will make the airport as self-sustaining as possible  
39 under the circumstances existing at the airport, including volume  
40 of traffic and economy of collection; and

1 (B) without including in the rate base used for the charges the  
2 Government's share of costs for any project for which a grant is  
3 made under this subchapter or was made under the Federal Air-  
4 port Act or the Airport and Airway Development Act of 1970;

5 (14) the project accounts and records will be kept using a standard  
6 system of accounting that the Secretary, after consulting with appro-  
7 priate public agencies, prescribes;

8 (15) the airport owner or operator will submit any annual or special  
9 airport financial and operations reports to the Secretary that the Sec-  
10 retary reasonably requests;

11 (16) the airport owner or operator will maintain a current layout  
12 plan of the airport that meets the following requirements:

13 (A) the plan will be in a form the Secretary prescribes;

14 (B) the Secretary will approve the plan and any revision or  
15 modification before the plan, revision, or modification takes effect;

16 (C) the owner or operator will not make or allow any alteration  
17 in the airport or any of its facilities if the alteration does not com-  
18 ply with the plan the Secretary approves, and the Secretary is of  
19 the opinion that the alteration may affect adversely the safety,  
20 utility, or efficiency of the airport; and

21 (D) when an alteration in the airport or its facility is made that  
22 does not conform to the approved plan and that the Secretary de-  
23 cides adversely affects the safety, utility, or efficiency of any prop-  
24 erty on or off the airport that is owned, leased, or financed by the  
25 Government, the owner or operator, if requested by the Secretary,  
26 will—

27 (i) eliminate the adverse effect in a way the Secretary ap-  
28 proves; or

29 (ii) bear all cost of relocating the property or its replace-  
30 ment to a site acceptable to the Secretary and of restoring  
31 the property or its replacement to the level of safety, utility,  
32 efficiency, and cost of operation that existed before the alter-  
33 ation was made;

34 (17) each contract and subcontract for program management, con-  
35 struction management, planning studies, feasibility studies, architec-  
36 tural services, preliminary engineering, design, engineering, surveying,  
37 mapping, and related services will be awarded in the same way that  
38 a contract for architectural and engineering services is negotiated  
39 under title IX of the Federal Property and Administrative Services Act  
40 of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based  
41 requirement prescribed for or by the sponsor; and

1 (18) the airport and each airport record will be available for inspec-  
 2 tion by the Secretary on reasonable request, and a report of the airport  
 3 budget will be available to the public at reasonable times and places.

4 (b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of  
 5 Transportation may approve a project grant application under this sub-  
 6 chapter for an airport development project only if the Secretary receives  
 7 written assurances, satisfactory to the Secretary, that local taxes on aviation  
 8 fuel (except taxes in effect on December 30, 1987) and the revenues gen-  
 9 erated by a public airport will be expended for the capital or operating costs  
 10 of—

11 (A) the airport;

12 (B) the local airport system; or

13 (C) other local facilities owned or operated by the airport owner or  
 14 operator and directly and substantially related to the air transportation  
 15 of passengers or property.

16 (2) Paragraph (1) of this subsection does not apply if a provision enacted  
 17 not later than September 2, 1982, in a law controlling financing by the air-  
 18 port owner or operator, or a covenant or assurance in a debt obligation is-  
 19 sued not later than September 2, 1982, by the owner or operator, provides  
 20 that the revenues, including local taxes on aviation fuel at public airports,  
 21 from any of the facilities of the owner or operator, including the airport,  
 22 be used to support not only the airport but also the general debt obligations  
 23 or other facilities of the owner or operator.

24 (3) This subsection does not prevent the use of a State tax on aviation  
 25 fuel to support a State aviation program or the use of airport revenue on  
 26 or off the airport for a noise mitigation purpose.

27 (c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection,  
 28 land is needed for an airport purpose (except a noise compatibility purpose)  
 29 if—

30 (A)(i) the land may be needed for an aeronautical purpose (including  
 31 runway protection zone) or serves as noise buffer land; and

32 (ii) revenue from interim uses of the land contributes to the financial  
 33 self-sufficiency of the airport; and

34 (B) for land purchased with a grant the owner or operator received  
 35 not later than December 30, 1987, the Secretary of Transportation or  
 36 the department, agency, or instrumentality of the Government that  
 37 made the grant was notified by the owner or operator of the use of  
 38 the land and did not object to the use and the land is still being used  
 39 for that purpose.

40 (2) The Secretary of Transportation may approve an application under  
 41 this subchapter for an airport development project grant only if the Sec-



retary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned pub-

1   lic-use airport only if the Secretary receives appropriate assurances that the  
2   airport will continue to function as a public-use airport during the economic  
3   life (that must be at least 10 years) of any facility at the airport that was  
4   developed with Government financial assistance under this subchapter.

5   (e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS  
6   CONCERNS.—(1) The Secretary of Transportation may approve a project  
7   grant application under this subchapter for an airport development project  
8   only if the Secretary receives written assurances, satisfactory to the Sec-  
9   retary, that the airport owner or operator will take necessary action to en-  
10   sure, to the maximum extent practicable, that at least 10 percent of all  
11   businesses at the airport selling consumer products or providing consumer  
12   services to the public are small business concerns (as defined by regulations  
13   of the Secretary) owned and controlled by a socially and economically dis-  
14   advantaged individual (as defined in section 47113(a) of this title).

15   (2) An airport owner or operator may meet the percentage goal of para-  
16   graph (1) of this subsection by including any business operated through a  
17   management contract or subcontract. The dollar amount of a management  
18   contract or subcontract with a disadvantaged business enterprise shall be  
19   added to the total participation by disadvantaged business enterprises in  
20   airport concessions and to the base from which the airport's percentage goal  
21   is calculated. The dollar amount of a management contract or subcontract  
22   with a non-disadvantaged business enterprise and the gross revenue of busi-  
23   ness activities to which the management contract or subcontract pertains  
24   may not be added to this base.

25   (3) Except as provided in paragraph (4) of this subsection, an airport  
26   owner or operator may meet the percentage goal of paragraph (1) of this  
27   subsection by including the purchase from disadvantaged business enter-  
28   prises of goods and services used in businesses conducted at the airport, but  
29   the owner or operator and the businesses conducted at the airport shall  
30   make good faith efforts to explore all available options to achieve, to the  
31   maximum extent practicable, compliance with the goal through direct owner-  
32   ship arrangements, including joint ventures and franchises.

33   (4)(A) In complying with paragraph (1) of this subsection, an airport  
34   owner or operator shall include the revenues of car rental firms at the air-  
35   port in the base from which the percentage goal in paragraph (1) is cal-  
36   culated.

37   (B) An airport owner or operator may require a car rental firm to meet  
38   a requirement under paragraph (1) of this subsection by purchasing or leas-  
39   ing goods or services from a disadvantaged business enterprise. If an owner  
40   or operator requires such a purchase or lease, a car rental firm shall be per-  
41   mitted to meet the requirement by including purchases or leases of vehicles

1 from any vendor that qualifies as a small business concern owned and con-  
 2 trolled by a socially and economically disadvantaged individual.

3 (C) This subsection does not require a car rental firm to change its cor-  
 4 porate structure to provide for direct ownership arrangements to meet the  
 5 requirements of this subsection.

6 (5) This subsection does not preempt—

7 (A) a State or local law, regulation, or policy enacted by the govern-  
 8 ing body of an airport owner or operator; or

9 (B) the authority of a State or local government or airport owner  
 10 or operator to adopt or enforce a law, regulation, or policy related to  
 11 disadvantaged business enterprises.

12 (6) An airport owner or operator may provide opportunities for a small  
 13 business concern owned and controlled by a socially and economically dis-  
 14 advantaged individual to participate through direct contractual agreement  
 15 with that concern.

16 (7) An air carrier that provides passenger or property-carrying services  
 17 or another business that conducts aeronautical activities at an airport may  
 18 not be included in the percentage goal of paragraph (1) of this subsection  
 19 for participation of small business concerns at the airport.

20 (8) Not later than April 29, 1993, the Secretary of Transportation shall  
 21 prescribe regulations to carry out this subsection.

22 (f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport  
 23 and Airway Trust Fund under—

24 (1) subsection (c)(2)(A)(iii) of this section is available to the Sec-  
 25 retary of Transportation to make a grant for airport development or  
 26 airport planning under section 47104 of this title;

27 (2) subsection (c)(2)(B)(iii) of this section is available to the Sec-  
 28 retary—

29 (A) to make a grant for a purpose described in section 47115(b)  
 30 of this title; and

31 (B) for use under section 47114(d)(2) of this title at another  
 32 airport in the State in which the land was disposed of under sub-  
 33 section (c)(2)(B)(ii) of this section; and

34 (3) subsection (c)(2)(B)(iii) of this section is in addition to an  
 35 amount made available to the Secretary under section 48103 of this  
 36 title and not subject to apportionment under section 47114 of this title.

37 (g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section,  
 38 the Secretary of Transportation—

39 (A) shall prescribe requirements for sponsors that the Secretary con-  
 40 sider necessary; and

41 (B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—Before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(1) publish notice of the proposed modification in the Federal Register; and

(2) provide an opportunity for comment on the proposal.

(i) RELIEF FROM OBLIGATION TO PROVIDE FREE SPACE.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

(A) “duty-free merchandise” and “duty-free sales enterprise” have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) “highway” and “Federal-aid system” have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the

1 amount that is greater than 150 percent as determined under paragraph  
2 (2).

3 (B) The maximum amount of revenue Hawaii may use under paragraph  
4 (2) of this subsection is \$250,000,000.

5 (4) If a fee imposed or collected for rent, landing, or service from an air-  
6 craft operator by an airport operated by Hawaii is increased during the pe-  
7 riod from May 4, 1990, through December 31, 1994, by more than the per-  
8 centage change in the Consumer Price Index of All Urban Consumers for  
9 Honolulu, Hawaii, that the Secretary of Labor publishes during that period  
10 and if revenue derived from the fee increases because the fee increased, the  
11 amount under paragraph (3)(B) of this subsection shall be reduced by the  
12 amount of the projected revenue increase in the period less the part of the  
13 increase attributable to changes in the Index in the period.

14 (5) Hawaii shall determine costs, revenue, and projected revenue in-  
15 creases referred to in this subsection and shall submit the determinations  
16 to the Secretary of Transportation. A determination is approved unless the  
17 Secretary disapproves it not later than 30 days after it is submitted.

18 (6) Hawaii is not eligible for a grant under section 47115 of this title  
19 in a fiscal year in which Hawaii uses under paragraph (2) of this subsection  
20 revenue from sales referred to in paragraph (2). Hawaii shall repay  
21 amounts it receives in a fiscal year under a grant it is not eligible to receive  
22 because of this paragraph to the Secretary of Transportation for deposit in  
23 the discretionary fund established under section 47115.

24 (7)(A) This subsection applies only to revenue from sales referred to in  
25 paragraph (2) of this subsection from May 5, 1990, through December 30,  
26 1994, and to amounts in the Airport Revenue Fund of Hawaii that are at-  
27 tributable to revenue before May 4, 1990, on sales referred to in paragraph  
28 (2).

29 (B) Revenue from sales referred to in paragraph (2) of this subsection  
30 from May 5, 1990, through December 30, 1994, may be used under para-  
31 graph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year be-  
32 ginning after December 31, 1994.

### 33 **§47108. Project grant agreements**

34 (a) OFFER AND ACCEPTANCE.—On approving a project grant application  
35 under this subchapter, the Secretary of Transportation shall offer the spon-  
36 sor a grant to pay the United States Government's share of the project  
37 costs allowable under section 47110 of this title. The Secretary may impose  
38 terms on the offer that the Secretary considers necessary to carry out this  
39 subchapter and regulations prescribed under this subchapter. An offer shall  
40 state the obligations to be assumed by the sponsor and the maximum  
41 amount the Government will pay for the project from the amounts author-

1 ized under chapter 481 of this title (except sections 48102(e), 48106,  
 2 48107, and 48110). At the request of the sponsor, an offer of a grant for  
 3 a project that will not be completed in one fiscal year shall provide for the  
 4 obligation of amounts apportioned or to be apportioned to a sponsor under  
 5 section 47114(c) of this title for the fiscal years necessary to pay the Gov-  
 6 ernment's share of the cost of the project. An offer that is accepted in writ-  
 7 ing by the sponsor is an agreement binding on the Government and the  
 8 sponsor. The Government may pay or be obligated to pay a project cost only  
 9 after a grant agreement for the project is signed.

10 (b) INCREASING GOVERNMENT'S SHARE UNDER THIS SUBCHAPTER OR  
 11 CHAPTER 475.—(1) When an offer has been accepted in writing, the  
 12 amount stated in the offer as the maximum amount the Government will  
 13 pay may be increased only as provided in paragraphs (2) and (3) of this  
 14 subsection.

15 (2)(A) For a project receiving assistance under a grant approved under  
 16 the Airport and Airway Improvement Act of 1982 before October 1, 1987,  
 17 the amount may be increased by not more than—

18 (i) 10 percent for an airport development project, except a project  
 19 for acquiring an interest in land; and

20 (ii) 50 percent of the total increase in allowable project costs attrib-  
 21 utable to acquiring an interest in land, based on current creditable ap-  
 22 praisals.

23 (B) An increase under subparagraph (A) of this paragraph may be paid  
 24 only from amounts the Government recovers from other grants made under  
 25 this subchapter.

26 (3) For a project receiving assistance under a grant approved under the  
 27 Act, this subchapter, or chapter 475 of this title after September 30, 1987,  
 28 the amount may be increased—

29 (A) for an airport development project, by not more than 15 percent;  
 30 and

31 (B) for a grant after September 30, 1992, to acquire an interest in  
 32 land for an airport (except a primary airport), by not more than the  
 33 greater of the following, based on current creditable appraisals or a  
 34 court award in a condemnation proceeding:

35 (i) 15 percent; or

36 (ii) 25 percent of the total increase in allowable project costs  
 37 attributable to acquiring an interest in land.

38 (c) INCREASING GOVERNMENT'S SHARE UNDER AIRPORT AND AIRWAY  
 39 DEVELOPMENT ACT OF 1970.—For a project receiving assistance under a  
 40 grant made under the Airport and Airway Development Act of 1970, the  
 41 maximum amount the Government will pay may be increased by not more

than 10 percent. An increase under this subsection may be paid only from amounts the Government recovers from other grants made under the Act.

(d) CHANGING WORKSCOPE.—With the consent of the sponsor, the Secretary may amend a grant agreement made under this subchapter to change the workscope of a project financed under the grant if the amendment does not result in an increase in the maximum amount the Government may pay under subsection (b) of this section.

#### **§ 47109. United States Government's share of project costs**

(a) GENERAL.—Except as provided in subsections (b) and (c) of this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports; and

(2) 90 percent for a project at any other airport.

(b) INCREASED GOVERNMENT SHARE.—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

(1) 25 percent;

(2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or

(3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) LIMITATION.—Notwithstanding subsections (a) and (b) of this section, the Government's share of project costs allowable under section 47110(d) of this title may not be more than 75 percent, except that the Government's share shall be 85 percent for a project at a commercial service airport that does not have more than .05 percent of the total annual passenger boardings in the United States.

#### **§ 47110. Allowable project costs**

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

(1) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title;

(2) if the cost is incurred—

(A) after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed; or

(B) after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(3) to the extent the cost is reasonable in amount;

(4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted; and

(5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108(b) of this title).

(c) CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.—The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—

(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; or

(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) TERMINAL DEVELOPMENT COSTS.—(1) The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(i) all the safety equipment required for certification of the airport under section 44706 of this title;

(ii) all the security equipment required by regulation; and



1 (iii) provided for access, to the area of the airport for pas-  
 2 sengers for boarding or exiting aircraft, to those passengers board-  
 3 ing or exiting aircraft, except air carrier aircraft;

4 (B) if the cost is directly related to moving passengers and baggage  
 5 in air commerce within the airport, including vehicles for moving pas-  
 6 sengers between terminal facilities and between terminal facilities and  
 7 aircraft; and

8 (C) under terms necessary to protect the interests of the Govern-  
 9 ment.

10 (2) In making a decision under paragraph (1) of this subsection, the Sec-  
 11 retary may approve as allowable costs the expenses of terminal development  
 12 in a revenue-producing area and construction, reconstruction, repair, and  
 13 improvement in a nonrevenue-producing parking lot if—

14 (A) the airport does not have more than .05 percent of the total an-  
 15 nual passenger boardings in the United States; and

16 (B) the sponsor certifies that any needed airport development project  
 17 affecting safety, security, or capacity will not be deferred because of  
 18 the Secretary's approval.

19 (e) LETTERS OF INTENT.—(1) The Secretary may issue a letter of intent  
 20 to the sponsor stating an intention to obligate from future budget authority  
 21 an amount, not more than the Government's share of allowable project  
 22 costs, for an airport development project (including costs of formulating the  
 23 project) at a primary or reliever airport. The letter shall establish a schedule  
 24 under which the Secretary will reimburse the sponsor for the Government's  
 25 share of allowable project costs, as amounts become available, if the spon-  
 26 sor, after the Secretary issues the letter, carries out the project without re-  
 27 ceiving amounts under this subchapter.

28 (2) Paragraph (1) of this subsection applies to a project—

29 (A) about which the sponsor notifies the Secretary, before the project  
 30 begins, of the sponsor's intent to carry out the project;

31 (B) that will comply with all statutory and administrative require-  
 32 ments that would apply to the project if it were carried out with  
 33 amounts made available under this subchapter; and

34 (C) the Secretary decides will enhance system-wide airport capacity  
 35 significantly and meets the criteria of section 47115(d) of this title.

36 (3) A letter of intent issued under paragraph (1) of this subsection is not  
 37 an obligation of the Government under section 1501 of title 31, and the let-  
 38 ter is not deemed to be an administrative commitment for financing. An ob-  
 39 ligation or administrative commitment may be made only as amounts are  
 40 provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be needed for grants under section 48103 that are not covered by a letter.

(5) A letter of intent issued under paragraph (1) of this subsection may not condition the obligation of amounts on the imposition of a passenger facility fee.

(f) NONALLOWABLE COSTS.—Except as provided in subsection (d) of this section and section 47118(f) of this title, a cost is not an allowable airport development project cost if it is for—

(1) constructing a public parking facility for passenger automobiles;

(2) constructing, altering, or repairing part of an airport building, except to the extent the building will be used for facilities or activities directly related to the safety of individuals at the airport;

(3) decorative landscaping; or

(4) providing or installing sculpture or art works.

#### **§47111. Payments under project grant agreements**

(a) GENERAL AUTHORITY.—After making a project grant agreement under this subchapter and consulting with the sponsor, the Secretary of Transportation may decide when and in what amounts payments under the agreement will be made. Payments totaling not more than 90 percent of the United States Government's share of the project's estimated allowable costs may be made before the project is completed if the sponsor certifies to the Secretary that the total amount expended from the advance payments at any time will not be more than the cost of the airport development work completed on the project at that time.

(b) RECOVERING PAYMENTS.—If the Secretary determines that the total amount of payments made under a grant agreement under this subchapter is more than the Government's share of the total allowable project costs, the Government may recover the excess amount. If the Secretary finds that a project for which an advance payment was made has not been completed within a reasonable time, the Government may recover any part of the advance payment for which the Government received no benefit.

(c) PAYMENT DEPOSITS.—A payment under a project grant agreement under this subchapter may be made only to an official or depository designated by the sponsor and authorized by law to receive public money.

(d) WITHHOLDING PAYMENTS.—(1) The Secretary may withhold a payment under a grant agreement under this subchapter for more than 180 days after the payment is due only if the Secretary—

1 (A) notifies the sponsor and provides an opportunity for a hearing;  
2 and

3 (B) finds that the sponsor has violated the agreement.

4 (2) The 180-day period may be extended by—

5 (A) agreement of the Secretary and the sponsor; or

6 (B) the hearing officer if the officer decides an extension is necessary  
7 because the sponsor did not follow the schedule the officer established.

8 (3) A person adversely affected by an order of the Secretary withholding  
9 a payment may apply for review of the order by filing a petition in the Unit-  
10 ed States Court of Appeals for the District of Columbia Circuit or in the  
11 court of appeals of the United States for the circuit in which the project  
12 is located. The petition must be filed not later than 60 days after the order  
13 is served on the petitioner.

14 **§ 47112. Carrying out airport development projects**

15 (a) CONSTRUCTION WORK.—The Secretary of Transportation may in-  
16 spect and approve construction work for an airport development project car-  
17 ried out under a grant agreement under this subchapter. The construction  
18 work must be carried out in compliance with regulations the Secretary pre-  
19 scribes. The regulations shall require the sponsor to make necessary cost  
20 and progress reports on the project. The regulations may amend or modify  
21 a contract related to the project only if the contract was made with actual  
22 notice of the regulations.

23 (b) PREVAILING WAGES.—A contract for more than \$2,000 involving  
24 labor for an airport development project carried out under a grant agree-  
25 ment under this subchapter must require contractors to pay labor minimum  
26 wage rates as determined by the Secretary of Labor under the Act of March  
27 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The  
28 minimum rates must be included in the bids for the work and in the invita-  
29 tion for those bids.

30 (c) VETERANS' PREFERENCE.—(1) In this subsection—

31 (A) “disabled veteran” has the same meaning given that term in sec-  
32 tion 2108 of title 5.

33 (B) “Vietnam-era veteran” means an individual who served on active  
34 duty (as defined in section 101 of title 38) in the armed forces for  
35 more than 180 consecutive days, any part of which occurred after Au-  
36 gust 4, 1964, and before May 8, 1975, and who was separated from  
37 the armed forces under honorable conditions.

38 (2) A contract involving labor for carrying out an airport development  
39 project under a grant agreement under this subchapter must require that  
40 preference in the employment of labor (except in executive, administrative,

and supervisory positions) be given to Vietnam-era veterans and disabled veterans when they are available and qualified for the employment.

**§47113. Minority and disadvantaged business participation**

(a) DEFINITIONS.—In this section—

(1) “small business concern”—

(A) has the same meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632); but

(B) does not include a concern, or group of concerns controlled by the same socially and economically disadvantaged individual, that has average annual gross receipts over the prior 3 fiscal years of more than \$16,015,000, as adjusted by the Secretary of Transportation for inflation.

(2) “socially and economically disadvantaged individual” has the same meaning given that term in section 8(c) of the Act (15 U.S.C. 637(c)) and relevant subcontracting regulations prescribed under section 8(c), except that women are presumed to be socially and economically disadvantaged.

(b) GENERAL REQUIREMENT.—Except to the extent the Secretary decides otherwise, at least 10 percent of amounts available in a fiscal year under section 48103 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(c) UNIFORM CRITERIA.—The Secretary shall establish minimum uniform criteria for State governments and airport sponsors to use in certifying whether a small business concern qualifies under this section. The criteria shall include on-site visits, personal interviews, licenses, analyses of stock ownership and bonding capacity, listings of equipment and work completed, resumes of principal owners, financial capacity, and type of work preferred.

(d) SURVEYS AND LISTS.—Each State or airport sponsor annually shall survey and compile a list of small business concerns referred to in subsection (b) of this section and the location of each concern in the State.

**§47114. Apportionments**

(a) DEFINITION.—In this section, “amount subject to apportionment” means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—(1)(A) The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

1 (i) \$7.80 for each of the first 50,000 passenger boardings at the air-  
 2 port during the prior calendar year;

3 (ii) \$5.20 for each of the next 50,000 passenger boardings at the air-  
 4 port during the prior calendar year;

5 (iii) \$2.60 for each of the next 400,000 passenger boardings at the  
 6 airport during the prior calendar year; and

7 (iv) \$.65 for each additional passenger boarding at the airport dur-  
 8 ing the prior calendar year.

9 (B) Not less than \$400,000 nor more than \$22,000,000 may be appor-  
 10 tioned under subparagraph (A) of this paragraph to an airport sponsor for  
 11 a primary airport for each fiscal year.

12 (2)(A) The Secretary shall apportion to the sponsors of airports served  
 13 by aircraft providing air transportation of only cargo with a total annual  
 14 landed weight of more than 100,000,000 pounds for each fiscal year an  
 15 amount equal to 3.5 percent of the amount subject to apportionment each  
 16 year, allocated among those airports in the proportion that the total annual  
 17 landed weight of those aircraft landing at each of those airports bears to  
 18 the total annual landed weight of those aircraft landing at all those airports.  
 19 However, not more than 8 percent of the amount apportioned under this  
 20 paragraph may be apportioned for any one airport.

21 (B) Landed weight under subparagraph (A) of this paragraph is the land-  
 22 ed weight of aircraft landing at each of those airports and all those airports  
 23 during the prior calendar year.

24 (3) The total of all amounts apportioned under paragraphs (1) and (2)  
 25 of this subsection may not be more than 44 percent of the amount subject  
 26 to apportionment for a fiscal year. If this paragraph requires reduction of  
 27 an amount that otherwise would be apportioned under this subsection, the  
 28 Secretary shall reduce proportionately the amount apportioned to each spon-  
 29 sor of an airport under paragraphs (1) and (2) until the 44 percent limit  
 30 is achieved.

31 (d) AMOUNTS APPORTIONED TO STATES.—(1) In this subsection—

32 (A) “area” includes land and water.

33 (B) “population” means the population stated in the latest decennial  
 34 census of the United States.

35 (2) The Secretary shall apportion to the States 12 percent of the amount  
 36 subject to apportionment for each fiscal year as follows:

37 (A) one percent of the apportioned amount to Guam, American  
 38 Samoa, the Northern Mariana Islands, the Trust Territory of the Pa-  
 39 cific Islands, and the Virgin Islands.

40 (B) except as provided in paragraph (3) of this subsection, 49.5 per-  
 41 cent of the apportioned amount for airports, except primary airports

and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the population of each of those States bears to the total population of all of those States.

(C) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the area of each of those States bears to the total area of all of those States.

(3) An amount apportioned under paragraph (2) of this subsection for an airport in—

(A) Alaska may be made available by the Secretary for a public airport described in section 47117(e)(1)(C)(ii) of this title to which section 15(a)(3)(A)(II) of the Airport and Airway Development Act of 1970 applied during the fiscal year that ended September 30, 1981; and

(B) Puerto Rico may be made available by the Secretary for a primary airport and an airport described in section 47117(e)(1)(C) of this title.

(e) ALTERNATIVE APPORTIONMENT FOR ALASKA.—(1) Instead of apportioning amounts for airports in Alaska under subsections (c) and (d) of this section, the Secretary may apportion amounts for those airports in the way in which amounts were apportioned in the fiscal year ending September 30, 1980, under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in the fiscal year ending September 30, 1980, under section 15(a)(3)(A) of the Act.

(2) This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(3) Airports referred to in this subsection include those public airports that received scheduled service as of September 3, 1982, but were not apportioned amounts in the fiscal year ending September 30, 1980, under section 15(a) of the Act because the airports were not under the control of a State or local public agency.

(f) REDUCING APPORTIONMENTS.—An amount that would be apportioned under this section (except subsection (c)(2)) in a fiscal year to the sponsor

of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a fee is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.

**§ 47115. Discretionary fund**

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)–(e) of this title; and

(2) 25 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter. However, 50 percent of amounts not apportioned under section 47114 of this title because of section 47114(f) and added to the fund is available for making grants for projects at small hub airports (as defined in section 41731 of this title).

(c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—At least 75 percent of the amount in the fund and distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—In selecting a project for a grant to preserve and enhance capacity as described in subsection (c)(1) of this section, the Secretary shall consider—

(1) the effect the project will have on the overall national air transportation system capacity;

(2) the project benefit and cost; and

(3) the financial commitment from non-United States Government sources to preserve or enhance airport capacity.

(e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines

will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

**§ 47116. Small airport fund**

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a small airport fund. The fund consists of 75 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) DISTRIBUTION OF AMOUNTS.—The Secretary may distribute amounts in the fund in each fiscal year for any purpose for which amounts are made available under section 48103 of this title as follows:

(1) one-third for grants to sponsors of public-use airports (except commercial service airports).

(2) two-thirds for grants to sponsors of each commercial service airport that each year has less than .05 percent of the total boardings in the United States in that year.

(c) AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPATION IN BLOCK GRANT PILOT PROGRAM.—An airport in a State participating in the State block grant pilot program under section 47128 of this title may receive a grant under this section to the same extent the airport may receive a grant if the State were not participating in the program.

**§ 47117. Use of apportioned amounts**

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) A sponsor of a primary airport may make an agreement with the Secretary of Transportation waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the Secretary makes the waived amount available for a grant for another public-use airport in the same State or geographical area as the primary airport.

(d) STATE USE.—An amount apportioned to a State under—



1 (1) section 47114(d)(2)(A) of this title is available for grants for air-  
 2 ports located in the State; and

3 (2) section 47114(d)(2)(B) or (C) of this title is available for grants  
 4 for airports described in section 47114(d)(2)(B) or (C) and located in  
 5 the State.

6 (e) SPECIAL APPORTIONMENT CATEGORIES.—(1) The Secretary shall use  
 7 amounts made available under section 48103 of this title for each fiscal year  
 8 as follows:

9 (A) at least 10 percent for grants for reliever airports.

10 (B) at least 12.5 percent for grants for airport noise compatibility  
 11 planning under section 47505(a)(2) of this title and for carrying out  
 12 noise compatibility programs under section 47504(c)(1) of this title.

13 (C) at least 2.5 percent for grants for—

14 (i) nonprimary commercial service airports; and

15 (ii) public airports (except commercial service airports) that  
 16 were eligible for United States Government assistance from  
 17 amounts apportioned under section 15(a)(3) of the Airport and  
 18 Airway Development Act of 1970, and to which section  
 19 15(a)(3)(A)(I) or (II) of the Act applied during the fiscal year  
 20 that ended September 30, 1981.

21 (D) at least .5 percent for integrated airport system planning grants  
 22 to planning agencies designated by the Secretary and authorized by the  
 23 laws of a State or political subdivision of a State to do planning for  
 24 an area of the State or subdivision in which a grant under this chapter  
 25 is to be used.

26 (E) at least 2.25 percent for the fiscal year ending September 30,  
 27 1993, and at least 2.5 percent for each of the fiscal years ending Sep-  
 28 tember 30, 1994, and 1995, to sponsors of current or former military  
 29 airports designated by the Secretary under section 47118(a) of this  
 30 title for grants for developing current and former military airports to  
 31 improve the capacity of the national air transportation system.

32 (2) A grant from the amount apportioned under section 47114(e) of this  
 33 title may not be included as part of the 2.5 percent required to be used  
 34 for grants under paragraph (1)(C) of this subsection.

35 (3) If the Secretary decides that an amount required to be used for  
 36 grants under paragraph (1) of this subsection cannot be used for a fiscal  
 37 year because there are insufficient qualified grant applications, the amount  
 38 the Secretary determines cannot be used is available during the fiscal year  
 39 for grants for other airports or for other purposes for which amounts are  
 40 authorized for grants under section 48103 of this title.

(f) LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.—The Secretary may not make a grant for a commercial service airport in Alaska of more than 110 percent of the amount apportioned for the airport for a fiscal year under section 47114(e) of this title.

(g) DISCRETIONARY USE OF APPORTIONMENTS.—(1) Subject to paragraph (2) of this subsection, if the Secretary finds, based on the notices the Secretary receives under section 47105(e) of this title or otherwise, that an amount apportioned under section 47114 of this title will not be used for grants during a fiscal year, the Secretary may use an equal amount for grants during that fiscal year for any of the purposes for which amounts are authorized for grants under section 48103 of this title.

(2) The Secretary may make a grant under paragraph (1) of this subsection only if the Secretary decides that—

(A) the total amount used for grants for the fiscal year under section 48103 of this title will not be more than the amount made available under section 48103 for that fiscal year; and

(B) the amounts authorized for grants under section 48103 of this title for later fiscal years are sufficient for grants of the apportioned amounts that were not used for grants under the apportionment during the fiscal year and that remain available under subsection (b) of this section.

(h) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

#### **§ 47118. Designating current and former military airports**

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate not more than 12 current or former military airports for which grants may be made under section 47117(e)(1)(E) of this title.

(b) SURVEY.—Not later than September 30, 1991, the Secretary shall complete a survey of current and former military airports to identify which airports have the greatest potential to improve the capacity of the national air transportation system. The survey shall identify the capital development needs of those airports to make them part of the system and which of those qualify for grants under section 47104 of this title.

(c) CONSIDERATIONS.—In carrying out this section, the Secretary shall consider only current or former military airports that, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system

1 capacity in major metropolitan areas and reduce current and projected  
2 flight delays.

3 (d) GRANTS.—Grants under section 47117(e)(1)(E) of this title may be  
4 made for an airport designated under subsection (a) of this section for the  
5 5 fiscal years following the designation. If an airport does not have a level  
6 of passengers getting on aircraft during that 5-year period that qualifies the  
7 airport as a small hub airport (as defined on January 1, 1990) or reliever  
8 airport, the Secretary may redesignate the airport for grants for additional  
9 fiscal years that the Secretary decides.

10 (e) TERMINAL BUILDING FACILITIES.—Notwithstanding section 47109(c)  
11 of this title, not more than \$5,000,000 for each airport from amounts the  
12 Secretary distributes under section 47115 of this title for a fiscal year is  
13 available to the sponsor of a current or former military airport the Sec-  
14 retary designates under this section to construct, improve, or repair a termi-  
15 nal building facility, including terminal gates used for revenue passengers  
16 getting on or off aircraft. A gate constructed, improved, or repaired under  
17 this subsection—

18 (1) may not be leased for more than 10 years; and

19 (2) is not subject to majority in interest clauses.

20 (f) PARKING LOTS, FUEL FARMS, AND UTILITIES.—Not more than a  
21 total of \$4,000,000 for each airport from amounts the Secretary distributes  
22 under section 47115 of this title for the fiscal years ending September 30,  
23 1993–1995, is available to the sponsor of a current or former military air-  
24 port the Secretary designates under this section to construct, improve, or  
25 repair airport surface parking lots, fuel farms, and utilities.

26 **§ 47119. Terminal development costs**

27 (a) REPAYING BORROWED MONEY.—An amount apportioned under sec-  
28 tion 47114 of this title and made available to the sponsor of an air carrier  
29 airport at which terminal development was carried out after June 30, 1970,  
30 and before July 12, 1976, is available to repay immediately money borrowed  
31 and used to pay the costs for terminal development at the airport, if those  
32 costs would be allowable project costs under section 47110(d) of this title  
33 if they had been incurred after September 3, 1982. An amount is available  
34 for a grant under this subsection—

35 (1) only if—

36 (A) the sponsor submits the certification required under section  
37 47110(d) of this title;

38 (B) the Secretary of Transportation decides that using the  
39 amount to repay the borrowed money will not defer an airport de-  
40 velopment project outside the terminal area at that airport; and

1 (C) amounts available for airport development under this sub-  
 2 chapter will not be used for additional terminal development  
 3 projects at the airport for at least 3 years beginning on the date  
 4 the grant is used to repay the borrowed money; and

5 (2) subject to the limitations in subsection (b)(1) and (2) of this sec-  
 6 tion.

7 (b) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary may  
 8 make available—

9 (1) to a sponsor of a primary airport, any part of amounts appor-  
 10 tioned to the sponsor for the fiscal year under section 47114(c)(1) of  
 11 this title to pay project costs allowable under section 47110(d) of this  
 12 title;

13 (2) to a sponsor of a nonprimary commercial service airport, not  
 14 more than \$200,000 of the amount that may be distributed for the fis-  
 15 cal year from the discretionary fund to pay project costs allowable  
 16 under section 47110(d) of this title; or

17 (3) not more than \$25,000,000 to pay project costs allowable for the  
 18 fiscal year under section 47110(d) of this title for projects at commer-  
 19 cial service airports that were not eligible for assistance for terminal  
 20 development during the fiscal year ending September 30, 1980, under  
 21 section 20(b) of the Airport and Airway Development Act of 1970.

## 22 **§ 47120. Grant priority**

23 In making a grant under this subchapter, the Secretary of Transportation  
 24 may give priority to a project that is consistent with an integrated airport  
 25 system plan.

## 26 **§ 47121. Records and audits**

27 (a) RECORDS.—A sponsor shall keep the records the Secretary of Trans-  
 28 portation requires. The Secretary may require records—

29 (1) that disclose—

30 (A) the amount and disposition by the sponsor of the proceeds  
 31 of the grant;

32 (B) the total cost of the plan or program for which the grant  
 33 is given or used; and

34 (C) the amounts and kinds of costs of the plan or program pro-  
 35 vided by other sources; and

36 (2) that make it easier to carry out an audit.

37 (b) AUDITS AND EXAMINATIONS.—The Secretary and the Comptroller  
 38 General may audit and examine records of a sponsor that are related to a  
 39 grant made under this subchapter.

40 (c) AUTHORITY OF COMPTROLLER GENERAL.—When an independent  
 41 audit is made of the accounts of a sponsor under this subchapter related

1 to the disposition of the proceeds of the grant or related to the plan or pro-  
 2 gram for which the grant was given or used, the sponsor shall submit a cer-  
 3 tified copy of the audit to the Comptroller General not more than 6 months  
 4 after the end of the fiscal year for which the audit was made. Not later  
 5 than April 15 of each year, the Comptroller General shall report to Con-  
 6 gress describing the results of each audit conducted or reviewed by the  
 7 Comptroller General under this section during the prior fiscal year. The  
 8 Comptroller General shall prescribe regulations necessary to carry out this  
 9 subsection.

10 (d) AUDIT REQUIREMENT.—The Secretary may require a sponsor to con-  
 11 duct an appropriate audit as a condition for receiving a grant under this  
 12 subchapter.

13 (e) ANNUAL REVIEW.—The Secretary shall review annually the record-  
 14 keeping and reporting requirements under this subchapter to ensure that  
 15 they are the minimum necessary to carry out this subchapter.

16 (f) WITHHOLDING INFORMATION FROM CONGRESS.—This section does  
 17 not authorize the Secretary or the Comptroller General to withhold informa-  
 18 tion from a committee of Congress authorized to have the information.

19 **§ 47122. Administrative**

20 (a) GENERAL.—The Secretary of Transportation may take action the  
 21 Secretary considers necessary to carry out this subchapter, including con-  
 22 ducting investigations and public hearings, prescribing regulations and pro-  
 23 cedures, and issuing orders.

24 (b) CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.—In conduct-  
 25 ing an investigation or public hearing under this subchapter, the Secretary  
 26 has the same authority the Secretary has under section 46104 of this title.  
 27 An action of the Secretary in exercising that authority is governed by the  
 28 procedures specified in section 46104 and shall be enforced as provided in  
 29 section 46104.

30 **§ 47123. Nondiscrimination**

31 The Secretary of Transportation shall take affirmative action to ensure  
 32 that an individual is not excluded because of race, creed, color, national ori-  
 33 gin, or sex from participating in an activity carried out with money received  
 34 under a grant under this subchapter. The Secretary shall prescribe regula-  
 35 tions necessary to carry out this section. The regulations shall be similar  
 36 to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C.  
 37 2000d et seq.). This section is in addition to title VI of the Act.

38 **§ 47124. Agreements for State and local operation of airport**  
 39 **facilities**

40 (a) GOVERNMENT RELIEF FROM LIABILITY.—The Secretary of Trans-  
 41 portation shall ensure that an agreement under this subchapter with a State

1 or a political subdivision of a State to allow the State or subdivision to oper-  
 2 ate an airport facility in the State or subdivision relieves the United States  
 3 Government from any liability arising out of, or related to, acts or omissions  
 4 of employees of the State or subdivision in operating the airport facility.

5 (b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—(1) The Secretary  
 6 shall continue the low activity (Visual Flight Rules) level I air traffic control  
 7 tower contract program established under subsection (a) of this section for  
 8 towers existing on December 30, 1987, and extend the program to other  
 9 towers as practicable.

10 (2) The Secretary may make a contract, on a sole source basis, with a  
 11 State or a political subdivision of a State to allow the State or subdivision  
 12 to operate an airport traffic control tower classified as a level I (Visual  
 13 Flight Rules) tower if the Secretary decides that the State or subdivision  
 14 has the capability to comply with the requirements of this paragraph. The  
 15 contract shall require that the State or subdivision comply with applicable  
 16 safety regulations in operating the facility and with applicable competition  
 17 requirements in making a subcontract to perform work to carry out the con-  
 18 tract.

19 **§ 47125. Conveyances of United States Government land**

20 (a) CONVEYANCES TO PUBLIC AGENCIES.—Except as provided in sub-  
 21 section (b) of this section, the Secretary of Transportation shall request the  
 22 head of the department, agency, or instrumentality of the United States  
 23 Government owning or controlling land or airspace to convey a property in-  
 24 terest in the land or airspace to the public agency sponsoring the project  
 25 or owning or controlling the airport when necessary to carry out a project  
 26 under this subchapter at a public airport, to operate a public airport, or  
 27 for the future development of an airport under the national plan of inte-  
 28 grated airport systems. The head of the department, agency, or instrumen-  
 29 tality shall decide whether the requested conveyance is consistent with the  
 30 needs of the department, agency, or instrumentality and shall notify the  
 31 Secretary of that decision not later than 4 months after receiving the re-  
 32 quest. If the head of the department, agency, or instrumentality decides  
 33 that the requested conveyance is consistent with its needs, the head of the  
 34 department, agency, or instrumentality, with the approval of the Attorney  
 35 General and without cost to the Government, shall make the conveyance.  
 36 A conveyance may be made only on the condition that the property interest  
 37 conveyed reverts to the Government, at the option of the Secretary, to the  
 38 extent it is not developed for an airport purpose or used consistently with  
 39 the conveyance.

(b) NONAPPLICATION.—Except as specifically provided by law, subsection (a) of this section does not apply to land or airspace owned or controlled by the Government within—

(1) a national park, national monument, national recreation area, or similar area under the administration of the National Park Service;

(2) a unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service;

or

(3) a national forest or Indian reservation.

#### **§ 47126. Criminal penalties for false statements**

A person (including an officer, agent, or employee of the United States Government or a public agency) shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, with intent to defraud the Government, knowingly makes—

(1) a false statement about the kind, quantity, quality, or cost of the material used or to be used, or the quantity, quality, or cost of work performed or to be performed, in connection with the submission of a plan, map, specification, contract, or estimate of project cost for a project included in a grant application submitted to the Secretary of Transportation for approval under this subchapter;

(2) a false statement or claim for work or material for a project included in a grant application approved by the Secretary under this subchapter; or

(3) a false statement in a report or certification required under this subchapter.

#### **§ 47127. Ground transportation demonstration projects**

(a) GENERAL AUTHORITY.—To improve the airport and airway system of the United States consistent with regional airport system plans financed under section 13(b) of the Airport and Airway Development Act of 1970, the Secretary of Transportation may carry out ground transportation demonstration projects to improve ground access to air carrier airport terminals. The Secretary may carry out a demonstration project independently or by grant or contract, including an agreement with another department, agency, or instrumentality of the United States Government.

(b) PRIORITY.—In carrying out this section, the Secretary shall give priority to a demonstration project that—

(1) affects an airport in an area with an operating regional rapid transit system with existing facilities reasonably near the airport;

(2) includes connection of the airport terminal to that system;

(3) is consistent with and supports a regional airport system plan adopted by the planning agency for the region and submitted to the Secretary; and

(4) improves access to air transportation for individuals residing or working in the region by encouraging the optimal balance of use of airports in the region.

**§ 47128. State block grant pilot program**

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations to carry out a State block grant pilot program. The regulations shall provide that the Secretary may designate not more than 7 qualified States to assume administrative responsibility for all airport grant amounts available under this subchapter, except for amounts designated for use at primary airports.

(b) APPLICATIONS AND SELECTION.—(1) A State wishing to participate in the program must submit an application to the Secretary. The Secretary shall select a State on the basis of its application only after—

(A) deciding the State has an organization capable of effectively administering a block grant made under this section;

(B) deciding the State uses a satisfactory airport system planning process;

(C) deciding the State uses a programming process acceptable to the Secretary;

(D) finding that the State has agreed to comply with United States Government standard requirements for administering the block grant; and

(E) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(2) For the fiscal years ending September 30, 1993–1996, the States selected shall include Illinois, Missouri, and North Carolina.

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(2) or (3) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government.

(d) ENDING EFFECTIVE DATE AND REPORT.—This section is effective only through September 30, 1996.



**§ 47129. Annual report**

Not later than April 1 of each year, the Secretary of Transportation shall submit to Congress a report on activities carried out under this subchapter during the prior fiscal year. The report shall include—

- (1) a detailed statement of airport development completed;
- (2) the status of each project undertaken;
- (3) the allocation of appropriations; and
- (4) an itemized statement of expenditures and receipts.

SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS

**§ 47151. Authority to transfer an interest in surplus property**

(a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may give a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

- (1) that the Secretary of Transportation decides is—
  - (A) desirable for developing, improving, operating, or maintaining a public airport (as defined in section 47102 of this title);
  - (B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or
  - (C) needed for developing sources of revenue from nonaviation businesses at a public airport; and
- (2) if the Administrator of General Services approves the gift and decides the interest is not best suited for industrial use.

(b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance with an instrument giving an interest in surplus property under this subchapter. The Secretary may amend the instrument to correct the instrument or to make the gift comply with law.

(c) DISPOSING OF INTERESTS NOT GIVEN UNDER THIS SUBCHAPTER.—An interest in surplus property that could be used at a public airport but that is not given under this subchapter shall be disposed of under other applicable law.

**§ 47152. Terms of gifts**

Except as provided in section 47153 of this title, the following terms apply to a gift of an interest in surplus property under this subchapter:

- (1) A State, political subdivision of a State, or tax-supported organization receiving the interest may use, lease, salvage, or dispose of the interest for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used,

1 leased, salvaged, or disposed of without materially and adversely affect-  
2 ing the development, improvement, operation, or maintenance of the  
3 airport at which the property is located.

4 (2) The interest shall be used and maintained for public use and  
5 benefit without unreasonable discrimination.

6 (3) A right may not be vested in a person, excluding others in the  
7 same class from using the airport at which the property is located—

8 (A) to conduct an aeronautical activity requiring the operation  
9 of aircraft; or

10 (B) to engage in selling or supplying aircraft, aircraft acces-  
11 sories, equipment, or supplies (except gasoline and oil), or aircraft  
12 services necessary to operate aircraft (including maintaining and  
13 repairing aircraft, aircraft engines, propellers, and appliances).

14 (4) The State, political subdivision, or tax-supported organization ac-  
15 cepting the interest shall clear and protect the aerial approaches to the  
16 airport by mitigating existing, and preventing future, airport hazards.

17 (5) During a national emergency declared by the President or Con-  
18 gress, the United States Government is entitled to use, control, or pos-  
19 sess, without charge, any part of the public airport at which the prop-  
20 erty is located. However, the Government shall—

21 (A) pay the entire cost of maintaining the part of the airport  
22 it exclusively uses, controls, or possesses during the emergency;

23 (B) contribute a reasonable share, consistent with the Govern-  
24 ment's use, of the cost of maintaining the property it uses  
25 nonexclusively, or over which the Government has nonexclusive  
26 control or possession, during the emergency; and

27 (C) pay a fair rental for use, control, or possession of improve-  
28 ments to the airport made without Government assistance.

29 (6) The Government is entitled to the nonexclusive use, without  
30 charge, of the landing area of an airport at which the property is lo-  
31 cated. The Secretary may limit the use of the landing area if necessary  
32 to prevent unreasonable interference with use by other authorized air-  
33 craft. However, the Government shall—

34 (A) contribute a reasonable share, consistent with the Govern-  
35 ment's use, of the cost of maintaining and operating the landing  
36 area; and

37 (B) pay for damages caused by its use of the landing area if  
38 its use of the landing area is substantial.

39 (7) The State, political subdivision, or tax-supported organization ac-  
40 cepting the interest shall release the Government from all liability for  
41 damages arising under an agreement that provides for Government use

of any part of an airport owned, controlled, or operated by the State, political subdivision, or tax-supported organization on which, adjacent to which, or in connection with which, the property is located.

(8) When a term under this section is not satisfied, any part of the interest in the property reverts to the Government, at the option of the Government, as the property then exists.

#### **§ 47153. Waiving and adding terms**

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may waive, without charge, a term of a gift of an interest in property under this subchapter if the Secretary decides that—

(A) the property no longer serves the purpose for which it was given; or

(B) the waiver will not prevent carrying out the purpose for which the gift was made and is necessary to advance the civil aviation interests of the United States.

(2) The Secretary of Transportation shall waive a term under paragraph (1) of this subsection on terms the Secretary considers necessary to protect or advance the civil aviation interests of the United States.

(b) WAIVERS AND INCLUSION OF ADDITIONAL TERMS ON REQUEST.—On request of the Secretary of Transportation or the Secretary of a military department, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may waive a term required by section 47152 of this title or add another term if the appropriate Secretary decides it is necessary to protect or advance the interests of the United States in civil aviation or for national defense.

### **CHAPTER 473—INTERNATIONAL AIRPORT FACILITIES**

Sec.

47301. Definitions.

47302. Providing airport and airway property in foreign territories.

47303. Training foreign citizens.

47304. Transfer of airport and airway property.

47305. Administrative.

47306. Criminal penalty.

#### **§ 47301. Definitions**

In this chapter—

(1) “airport property” means an interest in property used or useful in operating and maintaining an airport.

(2) “airway property” means an interest in property used or useful in operating and maintaining a ground installation, facility, or equipment desirable for the orderly and safe operation of air traffic, including air navigation, air traffic control, airway communication, and meteorological facilities.

(3) “foreign territory” means an area—

(A) over which no government or a government of a foreign country has sovereignty;

(B) temporarily under military occupation by the United States Government; or

(C) occupied or administered by the Government or a government of a foreign country under an international agreement.

(4) “territory outside the continental United States” means territory outside the 48 contiguous States and the District of Columbia.

**§ 47302. Providing airport and airway property in foreign territories**

(a) GENERAL AUTHORITY.—Subject to the concurrence of the Secretary of State and the consideration of objectives of the International Civil Aviation Organization—

(1) the Secretary of Transportation may acquire, establish, and construct airport property and airway property (except meteorological facilities) in foreign territory; and

(2) the Secretary of Commerce may acquire, establish, and construct meteorological facilities in foreign territory.

(b) SPECIFIC APPROPRIATIONS REQUIRED.—Except for airport property transferred under section 47304(b) of this title, an airport (as defined in section 40102(a) of this title) may be acquired, established, or constructed under subsection (a) of this section only if amounts have been appropriated specifically for the airport.

(c) ACCEPTING FOREIGN PAYMENTS.—The Secretary of Transportation or Commerce, as appropriate, may accept payment from a government of a foreign country or international organization for facilities or services sold or provided the government or organization under this chapter. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

**§ 47303. Training foreign citizens**

Subject to the concurrence of the Secretary of State, the Secretary of Transportation or Commerce, as appropriate, may train a foreign citizen in a subject related to aeronautics and essential to the orderly and safe operation of civil aircraft. The training may be provided—

(1) directly by the appropriate Secretary or jointly with another department, agency, or instrumentality of the United States Government;

(2) through a public or private agency of the United States (including a State or municipal educational institution); or

(3) through an international organization.

**§ 47304. Transfer of airport and airway property**

(a) GENERAL AUTHORITY.—When requested by the government of a foreign country or an international organization, the Secretary of Transportation or Commerce, as appropriate, may transfer to the government or organization airport property and airway property operated and maintained under this chapter by the appropriate Secretary in foreign territory. The transfer shall be on terms the appropriate Secretary considers proper, including consideration agreed on through negotiations with the government or organization.

(b) PROPERTY INSTALLED OR CONTROLLED BY MILITARY.—Subject to terms to which the parties agree, the Secretary of a military department may transfer without charge to the Secretary of Transportation airport property and airway property (except meteorological facilities), and to the Secretary of Commerce meteorological facilities, that the Secretary of the military department installed or controls in territory outside the continental United States. The transfer may be made if consistent with the needs of national defense and—

(1) the Secretary of the military department finds that the property or facility is no longer required exclusively for military purposes; and

(2) the Secretary of Transportation or Commerce, as appropriate, decides that the transfer is or may be necessary to carry out this chapter.

(c) CANAL ZONE AND REPUBLIC OF PANAMA.—(1) The Secretary of Transportation may provide, operate, and maintain facilities and services for air navigation, airway communications, and air traffic control in the Canal Zone and the Republic of Panama subject to—

(A) the approval of the Secretary of Defense; and

(B) each obligation assumed by the United States Government under an agreement between the Government and the Republic of Panama.

(2) The Secretary of a military department may transfer without charge to the Secretary of Transportation property located in the Canal Zone or the Republic of Panama when the Secretary of Transportation decides that the transfer may be useful in carrying out this chapter.

(3) Subsection (b) of this section (related to the Secretary of Transportation) and section 47302 (a) and (b) of this title do not apply in carrying out this subsection.

(d) RETAKING PROPERTY FOR MILITARY REQUIREMENT.—(1) When necessary for a military requirement, the Secretary of a military department immediately may retake property (with any improvements to it) transferred by the Secretary under subsection (b) or (c) of this section. The Secretary shall pay reasonable compensation to each person (or its successor in inter-

est) that made an improvement to the property that was not made at the expense of the Government. The Secretary or a delegate of the Secretary shall decide on the amount of compensation.

(2) On the recommendation of the Secretary of Transportation or Commerce, as appropriate, the Secretary of a military department may decide not to act under paragraph (1) of this subsection.

**§ 47305. Administrative**

(a) GENERAL AUTHORITY.—The Secretary of Transportation shall consolidate, operate, protect, maintain, and improve airport property and airway property (except meteorological facilities), and the Secretary of Commerce may consolidate, operate, protect, maintain, and improve meteorological facilities, that the appropriate Secretary has acquired and that are located in territory outside the continental United States. In carrying out this section, the appropriate Secretary may—

- (1) adapt the property or facility to the needs of civil aeronautics;
- (2) lease the property or facility for not more than 20 years;
- (3) make a contract, or provide directly, for facilities and services;
- (4) make reasonable charges for aeronautical services; and
- (5) acquire an interest in property.

(b) CREDITING APPROPRIATIONS.—Money received from the direct sale or charge that the Secretary of Transportation or Commerce, as appropriate, decides is equivalent to the cost of facilities and services sold or provided under subsection (a)(3) and (4) of this section is credited to the appropriation from which the cost was paid. The balance shall be deposited in the Treasury as miscellaneous receipts.

(c) USING OTHER GOVERNMENT FACILITIES AND SERVICES.—To carry out this chapter and to use personnel and facilities of the United States Government most advantageously and without unnecessary duplication, the Secretary of Transportation or Commerce, as appropriate, shall request, when practicable, to use a facility or service of an appropriate department, agency, or instrumentality of the Government on a reimbursable basis. A department, agency, or instrumentality receiving a request under this section may provide the facility or service.

(d) ADVERTISING NOT REQUIRED.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to a lease or contract made by the Secretary of Transportation or Commerce under this chapter.

**§ 47306. Criminal penalty**

A person that knowingly and willfully violates a regulation prescribed by the Secretary of Transportation to carry out this chapter shall be fined under title 18, imprisoned for not more than 6 months, or both.

1

**CHAPTER 475—NOISE****SUBCHAPTER I—NOISE ABATEMENT**

Sec.

- 47501. Definitions.
- 47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure.
- 47503. Noise exposure maps.
- 47504. Noise compatibility programs.
- 47505. Airport noise compatibility planning grants.
- 47506. Limitations on recovering damages for noise.
- 47507. Nonadmissibility of noise exposure map and related information as evidence.
- 47508. Noise standards for air carriers and foreign air carriers providing foreign air transportation.

**SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY**

- 47521. Findings.
- 47522. Definitions.
- 47523. National aviation noise policy.
- 47524. Airport noise and access restriction review program.
- 47525. Decision about airport noise and access restrictions on certain stage 2 aircraft.
- 47526. Limitations for noncomplying airport noise and access restrictions.
- 47527. Liability of the United States Government for noise damages.
- 47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels.
- 47529. Nonaddition rule.
- 47530. Nonapplication of sections 47528(a)–(d) and 47529 to aircraft outside the 48 contiguous States.
- 47531. Penalties for violating sections 47528–47530.
- 47532. Judicial review.
- 47533. Relationship to other laws.

2

**SUBCHAPTER I—NOISE ABATEMENT**

3

**§ 47501. Definitions**

4

In this subchapter—

5

(1) “airport” means a public-use airport as defined in section 47102

6

of this title.

7

(2) “airport operator” means—

8

(A) for an airport serving air carriers that have certificates

9

from the Secretary of Transportation, any person holding an air-

10

port operating certificate issued under section 44706 of this title;

11

and

12

(B) for any other airport, the person operating the airport.

13

**§ 47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure**

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After consultation with the Administrator of the Environmental Protec-

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tion Agency and United States Government, State, and interstate agencies

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that the Secretary of Transportation considers appropriate, the Secretary

18

shall by regulation—

19

(1) establish a single system of measuring noise that—

20

(A) has a highly reliable relationship between projected noise ex-

21

posure and surveyed reactions of individuals to noise; and

22

(B) is applied uniformly in measuring noise at airports and the

23

surrounding area;

1 (2) establish a single system for determining the exposure of individ-  
 2 uals to noise resulting from airport operations, including noise inten-  
 3 sity, duration, frequency, and time of occurrence; and

4 (3) identify land uses normally compatible with various exposures of  
 5 individuals to noise.

6 **§ 47503. Noise exposure maps**

7 (a) SUBMISSION AND PREPARATION.—An airport operator may submit to  
 8 the Secretary of Transportation a noise exposure map showing the  
 9 noncompatible uses in each area of the map on the date the map is submit-  
 10 ted, a description of estimated aircraft operations during 1985, and how  
 11 those operations will affect the map. The map shall—

12 (1) be prepared in consultation with public agencies and planning  
 13 authorities in the area surrounding the airport; and

14 (2) comply with regulations prescribed under section 47502 of this  
 15 title.

16 (b) REVISED MAPS.—If a change in the operation of an airport will es-  
 17 tablish a substantial new noncompatible use in an area surrounding the air-  
 18 port, the airport operator shall submit a revised noise exposure map to the  
 19 Secretary showing the new noncompatible use.

20 **§ 47504. Noise compatibility programs**

21 (a) SUBMISSIONS.—(1) An airport operator that submitted a noise expo-  
 22 sure map and related information under section 47503(a) of this title may  
 23 submit a noise compatibility program to the Secretary of Transportation  
 24 after—

25 (A) consulting with public agencies and planning authorities in the  
 26 area surrounding the airport, United States Government officials hav-  
 27 ing local responsibility for the airport, and air carriers using the air-  
 28 port; and

29 (B) notice and an opportunity for a public hearing.

30 (2) A program submitted under paragraph (1) of this subsection shall  
 31 state the measures the operator has taken or proposes to take to reduce ex-  
 32 isting noncompatible uses and prevent introducing additional noncompatible  
 33 uses in the area covered by the map. The measures may include—

34 (A) establishing a preferential runway system;

35 (B) restricting the use of the airport by a type or class of aircraft  
 36 because of the noise characteristics of the aircraft;

37 (C) constructing barriers and acoustical shielding and soundproofing  
 38 public buildings;

39 (D) using flight procedures to control the operation of aircraft to re-  
 40 duce exposure of individuals to noise in the area surrounding the air-  
 41 port; and



1 (E) acquiring land, air rights, easements, development rights, and  
 2 other interests to ensure that the property will be used in ways compat-  
 3 ible with airport operations.

4 (b) APPROVALS.—(1) The Secretary shall approve or disapprove a pro-  
 5 gram submitted under subsection (a) of this section (except as the program  
 6 is related to flight procedures referred to in subsection (a)(2)(D) of this sec-  
 7 tion) not later than 180 days after receiving it. The Secretary shall approve  
 8 the program (except as the program is related to flight procedures referred  
 9 to in subsection (a)(2)(D)) if the program—

10 (A) does not place an unreasonable burden on interstate or foreign  
 11 commerce;

12 (B) is reasonably consistent with achieving the goal of reducing  
 13 noncompatible uses and preventing the introduction of additional  
 14 noncompatible uses; and

15 (C) provides for necessary revisions because of a revised map submit-  
 16 ted under section 47503(b) of this title.

17 (2) A program (except as the program is related to flight procedures re-  
 18 ferred to in subsection (a)(2)(D) of this section) is deemed to be approved  
 19 if the Secretary does not act within the 180-day period.

20 (3) The Secretary shall submit any part of a program related to flight  
 21 procedures referred to in subsection (a)(2)(D) of this section to the Admin-  
 22 istrator of the Federal Aviation Administration. The Administrator shall ap-  
 23 prove or disapprove that part of the program.

24 (c) GRANTS.—(1) The Secretary may incur obligations to make grants  
 25 from amounts available under section 48103 of this title to carry out a  
 26 project under a part of a noise compatibility program approved under sub-  
 27 section (b) of this section. A grant may be made to—

28 (A) an airport operator submitting the program;

29 (B) a unit of local government in the area surrounding the airport,  
 30 if the Secretary decides the unit is able to carry out the project;

31 (C) an airport operator or unit of local government referred to in  
 32 clause (A) or (B) of this paragraph to carry out any part of a program  
 33 developed before February 18, 1980, or before implementing regula-  
 34 tions were prescribed, if the Secretary decides the program is substan-  
 35 tially consistent with reducing existing noncompatible uses and prevent-  
 36 ing the introduction of additional noncompatible uses and the purposes  
 37 of this chapter will be furthered by promptly carrying out the program;  
 38 and

39 (D) an airport operator or unit of local government referred to in  
 40 clause (A) or (B) of this paragraph to soundproof a building in the  
 41 noise impact area surrounding the airport that is used primarily for

educational or medical purposes and that the Secretary decides is adversely affected by airport noise.

(2) An airport operator may agree to make a grant made under paragraph (1)(A) of this subsection available to a public agency in the area surrounding the airport if the Secretary decides the agency is able to carry out the project.

(3) The Government's share of a project for which a grant is made under paragraph (1) of this subsection is the greater of—

(A) 80 percent of the cost of the project; or

(B) the Government's share that would apply if the amounts available for the project were made available under subchapter I of chapter 471 of this title for a project at the airport.

(4) The provisions of subchapter I of chapter 471 of this title related to grants apply to a grant made under this chapter, except—

(A) section 47109 (a) and (b) of this title; and

(B) any provision that the Secretary decides is inconsistent with, or unnecessary to carry out, this chapter.

(d) GOVERNMENT RELIEF FROM LIABILITY.—The Government is not liable for damages from aviation noise because of action taken under this section.

#### **§ 47505. Airport noise compatibility planning grants**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a sponsor of an airport to develop, for planning purposes, information necessary to prepare and submit—

(1) a noise exposure map and related information under section 47503 of this title, including the cost of obtaining the information; or

(2) a noise compatibility program under section 47504 of this title.

(b) AVAILABILITY OF AMOUNTS AND GOVERNMENT'S SHARE OF COSTS.—A grant under subsection (a) of this section may be made from amounts available under section 48103 of this title. The United States Government's share of the grant is the percent for which a project for airport development at an airport would be eligible under section 47109 (a) and (b) of this title.

#### **§ 47506. Limitations on recovering damages for noise**

(a) GENERAL LIMITATIONS.—A person acquiring an interest in property after February 18, 1980, in an area surrounding an airport for which a noise exposure map has been submitted under section 47503 of this title and having actual or constructive knowledge of the existence of the map may recover damages for noise attributable to the airport only if, in addition to any other elements for recovery of damages, the person shows that—

(1) after acquiring the interest, there was a significant—

1 (A) change in the type or frequency of aircraft operations at the  
2 airport;

3 (B) change in the airport layout;

4 (C) change in flight patterns; or

5 (D) increase in nighttime operations; and

6 (2) the damages resulted from the change or increase.

7 (b) CONSTRUCTIVE KNOWLEDGE.—Constructive knowledge of the exist-  
8 ence of a map under subsection (a) of this section shall be imputed, at a  
9 minimum, to a person if—

10 (1) before the person acquired the interest, notice of the existence  
11 of the map was published at least 3 times in a newspaper of general  
12 circulation in the county in which the property is located; or

13 (2) the person is given a copy of the map when acquiring the inter-  
14 est.

15 **§ 47507. Nonadmissibility of noise exposure map and related**  
16 **information as evidence**

17 No part of a noise exposure map or related information described in sec-  
18 tion 47503 of this title that is submitted to, or prepared by, the Secretary  
19 of Transportation and no part of a list of land uses the Secretary identifies  
20 as normally compatible with various exposures of individuals to noise may  
21 be admitted into evidence or used for any other purpose in a civil action  
22 asking for relief for noise resulting from the operation of an airport.

23 **§ 47508. Noise standards for air carriers and foreign air car-**  
24 **riers providing foreign air transportation**

25 (a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall  
26 require each air carrier and foreign air carrier providing foreign air trans-  
27 portation to comply with noise standards—

28 (1) the Secretary prescribed for new subsonic aircraft in regulations  
29 of the Secretary in effect on January 1, 1977; or

30 (2) of the International Civil Aviation Organization that are substan-  
31 tially compatible with standards of the Secretary for new subsonic air-  
32 craft in regulations of the Secretary at parts 36 and 91 of title 14,  
33 Code of Federal Regulations, prescribed between January 2, 1977, and  
34 January 1, 1982.

35 (b) COMPLIANCE AT PHASED RATE.—The Secretary shall require each  
36 air carrier and foreign air carrier providing foreign air transportation to  
37 comply with the noise standards at a phased rate similar to the rate for  
38 aircraft registered in the United States.

39 (c) NONDISCRIMINATION.—The requirement for air carriers providing for-  
40 eign air transportation may not be more stringent than the requirement for  
41 foreign air carriers.

## SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY

**§ 47521. Findings**

Congress finds that—

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system;

(3) a noise policy must be carried out at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the use of new technology aircraft and the use of revenues, including those available from passenger facility fees, for noise management;

(6) revenues controlled by the United States Government can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) revenues derived from a passenger facility fee may be applied to noise management and increased airport capacity; and

(8) a precondition to the establishment and collection of a passenger facility fee is the prescribing by the Secretary of Transportation of a regulation establishing procedures for reviewing airport noise and access restrictions on operations of stage 2 and stage 3 aircraft.

**§ 47522. Definitions**

In this subchapter—

(1) “air carrier”, “air transportation”, and “United States” have the same meanings given those terms in section 40102(a) of this title.

(2) “stage 3 noise levels” means the stage 3 noise levels in part 36 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

**§ 47523. National aviation noise policy**

(a) GENERAL REQUIREMENTS.—Not later than July 1, 1991, the Secretary of Transportation shall establish by regulation a national aviation noise policy that considers this subchapter, including the phaseout and nonaddition of stage 2 aircraft as provided in this subchapter and dates for carrying out that policy and reporting requirements consistent with this subchapter and law existing as of November 5, 1990.

(b) DETAILED ECONOMIC ANALYSIS.—The policy shall be based on a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

- (1) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;
- (2) the impact of competition in the airline and air cargo industries;
- (3) the impact on nonhub and small community air service; and
- (4) the impact on new entry into the airline industry.

**§47524. Airport noise and access restriction review program**

(a) GENERAL REQUIREMENTS.—The national aviation noise policy established under section 47523 of this title shall provide for establishing by regulation a national program for reviewing airport noise and access restrictions on the operation of stage 2 and stage 3 aircraft. The program shall provide for adequate public notice and opportunity for comment on the restrictions.

(b) STAGE 2 AIRCRAFT.—Except as provided in subsection (d) of this section, an airport noise or access restriction may include a restriction on the operation of stage 2 aircraft proposed after October 1, 1990, only if the airport operator publishes the proposed restriction and prepares and makes available for public comment at least 180 days before the effective date of the proposed restriction—

- (1) an analysis of the anticipated or actual costs and benefits of the existing or proposed restriction;
- (2) a description of alternative restrictions;
- (3) a description of the alternative measures considered that do not involve aircraft restrictions; and
- (4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction.

(c) STAGE 3 AIRCRAFT.—(1) Except as provided in subsection (d) of this section, an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator's request for approval as provided by the program established under this section. Restrictions to which this paragraph applies include—

- (A) a restriction on noise levels generated on either a single event or cumulative basis;
- (B) a restriction on the total number of stage 3 aircraft operations;
- (C) a noise budget or noise allocation program that would include stage 3 aircraft;
- (D) a restriction on hours of operations; and
- (E) any other restriction on stage 3 aircraft.

(2) Not later than 180 days after the Secretary receives an airport or aircraft operator's request for approval of an airport noise or access restriction on the operation of a stage 3 aircraft, the Secretary shall approve or disapprove the restriction. The Secretary may approve the restriction only if the Secretary finds on the basis of substantial evidence that—

(A) the restriction is reasonable, nonarbitrary, and nondiscriminatory;

(B) the restriction does not create an unreasonable burden on interstate or foreign commerce;

(C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;

(D) the restriction does not conflict with a law or regulation of the United States;

(E) an adequate opportunity has been provided for public comment on the restriction; and

(F) the restriction does not create an unreasonable burden on the national aviation system.

(3) Paragraphs (1) and (2) of this subsection do not apply if the Administrator of the Federal Aviation Administration, before November 5, 1990, has formed a working group (outside the process established by part 150 of title 14, Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes at the airport. However, if an agreement on noise reductions at that airport is made between the airport proprietor and one or more air carriers or foreign air carriers that constitute a majority of the carrier use of the airport, this paragraph applies only to a local action to enforce the agreement.

(4) The Secretary may reevaluate an airport noise or access restriction previously agreed to or approved under this subsection on request of an aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport that justifies a reevaluation. The Secretary shall establish by regulation procedures for conducting a reevaluation. A reevaluation—

(A) shall be based on the criteria in paragraph (2) of this subsection; and

(B) may be conducted only after 2 years after a decision under paragraph (2) of this subsection has been made.

(d) NONAPPLICATION.—Subsections (b) and (c) of this section do not apply to—

(1) a local action to enforce a negotiated or executed airport noise or access agreement between the airport operator and the aircraft operators in effect on November 5, 1990;

(2) a local action to enforce a negotiated or executed airport noise or access restriction agreed to by the airport operator and the aircraft operators before November 5, 1990;

(3) an intergovernmental agreement including an airport noise or access restriction in effect on November 5, 1990;

(4) a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety;

(5)(A) an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect; or

(B) a new restriction imposed by an airport operator to replace any part of a restriction described in subclause (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990; or

(6) a local action that represents the adoption of the final part of a program of a staged airport noise or access restriction if the initial part of the program was adopted during 1988 and was in effect on November 5, 1990.

(e) GRANT LIMITATIONS.—Beginning on the 91st day after the Secretary prescribes a regulation under subsection (a) of this section, a sponsor of a facility operating under an airport noise or access restriction on the operation of stage 3 aircraft that first became effective after October 1, 1990, is eligible for a grant under section 47104 of this title and is eligible to impose a passenger facility fee under section 40117 of this title only if the restriction has been—

(1) agreed to by the airport proprietor and aircraft operators;

(2) approved by the Secretary as required by subsection (c)(1) of this section; or

(3) rescinded.

**§ 47525. Decision about airport noise and access restrictions on certain stage 2 aircraft**

The Secretary of Transportation shall conduct a study and decide on the application of section 47524(a)–(d) of this title to airport noise and access restrictions on the operation of stage 2 aircraft with a maximum weight of not more than 75,000 pounds. In making the decision, the Secretary shall consider—

(1) noise levels produced by those aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding the airports;

(4) international standards and agreements on aircraft noise; and

(5) other factors the Secretary considers necessary.

**§ 47526. Limitations for noncomplying airport noise and access restrictions**

Unless the Secretary of Transportation is satisfied that an airport is not imposing an airport noise or access restriction not in compliance with this subchapter, the airport may not—

(1) receive money under subchapter I of chapter 471 of this title;

or

(2) impose a passenger facility fee under section 40117 of this title.

**§ 47527. Liability of the United States Government for noise damages**

When a proposed airport noise or access restriction is disapproved under this subchapter, the United States Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of the disapproval. The United States Court of Federal Claims has exclusive jurisdiction of a civil action under this section.

**§ 47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels**

(a) PROHIBITION.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate after December 31, 1999, a civil subsonic turbojet with a maximum weight of more than 75,000 pounds to or from an airport in the United States only if the Secretary of Transportation finds that the aircraft complies with the stage 3 noise levels.

(b) WAIVERS.—(1) If, not later than July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the stage 3 noise levels, the carrier may apply for a waiver of subsection (a) of this section for the remaining aircraft used by the carrier to provide air transportation. The application must be filed with the Secretary not later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the carrier to provide air transportation comply with the noise levels not later than December 31, 2003.

(2) The Secretary may grant a waiver under this subsection if the Secretary finds it would be in the public interest. In making the finding, the Secretary shall consider the effect of granting the waiver on competition in the air carrier industry and on small community air service.

(3) A waiver granted under this subsection may not permit the operation of stage 2 aircraft in the United States after December 31, 2003.



(c) SCHEDULE FOR PHASED-IN COMPLIANCE.—The Secretary shall establish by regulation a schedule for phased-in compliance with subsection (a) of this section. The phase-in period shall begin on November 5, 1990, and end before December 31, 1999. The regulations shall establish interim compliance dates. The schedule for phased-in compliance shall be based on—

(1) a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(A) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(B) the impact of competition in the airline and air cargo industries;

(C) the impact on nonhub and small community air service; and

(D) the impact on new entry into the airline industry; and

(2) an analysis of the impact of aircraft noise on individuals residing near airports.

(d) ANNUAL REPORT.—Beginning with calendar year 1992—

(1) each air carrier shall submit to the Secretary an annual report on the progress the carrier is making toward complying with the requirements of this section and regulations prescribed under this section; and

(2) the Secretary shall submit to Congress an annual report on the progress being made toward that compliance.

(e) HAWAIIAN OPERATIONS.—(1) In this subsection, “turnaround service” means a flight between places only in Hawaii.

(2)(A) An air carrier or foreign air carrier may not operate in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, a greater number of stage 2 aircraft with a maximum weight of more than 75,000 pounds than it operated in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, on November 5, 1990.

(B) An air carrier that provided turnaround service in Hawaii on November 5, 1990, using stage 2 aircraft with a maximum weight of more than 75,000 pounds may include in the number of aircraft authorized under subparagraph (A) of this paragraph all stage 2 aircraft with a maximum weight of more than 75,000 pounds that were owned or leased by that carrier on that date, whether or not the aircraft were operated by the carrier on that date.

(3) An air carrier may provide turnaround service in Hawaii using stage 2 aircraft with a maximum weight of more than 75,000 pounds only if the carrier provided the service on November 5, 1990.

**§ 47529. Nonaddition rule**

(a) GENERAL LIMITATIONS.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into the United States after November 4, 1990, only if the aircraft—

(1) complies with the stage 3 noise levels; or

(2) was purchased by the person importing the aircraft into the United States under a legally binding contract made before November 5, 1990.

(b) EXEMPTIONS.—The Secretary of Transportation may provide an exemption from subsection (a) of this section to permit a person to obtain modifications to an aircraft to meet the stage 3 noise levels.

(c) AIRCRAFT DEEMED NOT IMPORTED.—In this section, an aircraft is deemed not to have been imported into the United States if the aircraft—

(1) was owned on November 5, 1990, by—

(A) a corporation, trust, or partnership organized under the laws of the United States or a State (including the District of Columbia);

(B) an individual who is a citizen of the United States; or

(C) an entity that is owned or controlled by a corporation, trust, partnership, or individual described in subclause (A) or (B) of this clause; and

(2) enters the United States not later than 6 months after the expiration of a lease agreement (including any extension) between an owner described in clause (1) of this subsection and a foreign carrier.

**§ 47530. Nonapplication of sections 47528(a)–(d) and 47529 to aircraft outside the 48 contiguous States**

Sections 47528(a)–(d) and 47529 of this title do not apply to aircraft used only to provide air transportation outside the 48 contiguous States. A civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into a noncontiguous State or a territory or possession of the United States after November 4, 1990, may be used to provide air transportation in the 48 contiguous States only if the aircraft complies with the stage 3 noise levels.

**§ 47531. Penalties for violating sections 47528–47530**

A person violating sections 47528, 47529, or 47530 of this title or a regulation prescribed under those sections is subject to the same civil penalties and procedures under chapter 463 of this title as a person violating section 44701(a) or (b) or 44702–44716 of this title.

**§ 47532. Judicial review**

An action taken by the Secretary of Transportation under section 47528–47531 of this title is subject to judicial review as provided under section 46110 of this title.

**§ 47533. Relationship to other laws**

Except as provided by section 47524 of this title, this subchapter does not affect—

(1) law in effect on November 5, 1990, on airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990; or

(3) the authority of the Secretary of Transportation to seek and obtain legal remedies the Secretary considers appropriate, including injunctive relief.

**PART C—FINANCING**

**CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND  
AUTHORIZATIONS**

Sec.

48101. Air navigation facilities.

48102. Research and development.

48103. Airport planning and development and noise compatibility planning and programs.

48104. Certain direct costs and joint air navigation services.

48105. Weather reporting services.

48106. Airway science curriculum grants.

48107. Civil aviation security research and development.

48108. Availability and uses of amounts.

48109. Submission of budget information and legislative recommendations and comments.

48110. Facilities for advanced training of maintenance technicians for air carrier aircraft.

**§ 48101. Air navigation facilities**

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title:

(1) for the fiscal years ending September 30, 1991–1993, \$8,200,000,000.

(2) for the fiscal years ending September 30, 1991–1994, \$11,100,000,000.

(3) for the fiscal years ending September 30, 1991–1995, \$14,000,000,000.

(b) MAJOR AIRWAY CAPITAL INVESTMENT PLAN CHANGES.—If the Secretary decides that it is necessary to augment or substantially modify ele-

ments of the Airway Capital Investment Plan referred to in section 44501(b) of this title (including a decision that it is necessary to establish more than 23 area control facilities), not more than \$100,000,000 may be appropriated to the Secretary out of the Fund for the fiscal year ending September 30, 1994, to carry out the augmentation or modification.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

## **§ 48102. Research and development**

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504, 44505, 44507, 44509, and 44511–44513 of this title:

(1) for the fiscal year ending September 30, 1993—

(A) \$14,700,000 only for management and analysis projects and activities.

(B) \$87,000,000 only for capacity and air traffic management technology projects and activities.

(C) \$28,000,000 only for communications, navigation, and surveillance projects and activities.

(D) \$7,700,000 only for weather projects and activities.

(E) \$6,800,000 only for airport technology projects and activities.

(F) \$44,000,000 only for aircraft safety technology projects and activities.

(G) \$41,100,000 only for system security technology projects and activities.

(H) \$31,000,000 only for human factors and aviation medicine projects and activities.

(I) \$4,500,000 for environment and energy projects and activities.

(J) \$5,200,000 for innovative and cooperative research projects and activities.

(2) for the fiscal year ending September 30, 1994, \$297,000,000.

(b) AVAILABILITY FOR RESEARCH.—(1) At least 15 percent of the amount appropriated under subsection (a) of this section shall be for long-term research projects.

(2) At least 3 percent of the amount appropriated under subsection (a) of this section shall be available to the Administrator of the Federal Aviation Administration to make grants under section 44511 of this title.

(c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

(2) The Secretary may transfer more than 10 percent of an authorized amount to or from a category only after—

(A) submitting a written explanation of the proposed transfer to the Committees on Science, Space, and Technology and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(B) 30 days have passed after the explanation is submitted or each Committee notifies the Secretary in writing that it does not object to the proposed transfer.

(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the amounts made available under subsection (a) of this section, at least \$25,000,000 may be appropriated each fiscal year for research and development under section 44505(a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

(2) The Administrator shall submit to the Committees on Science, Space, and Technology and Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the Secretary out of amounts in the Fund available for research and development to conduct research under section 44506(a) and (b) of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

**§48103. Airport planning and development and noise compatibility planning and programs**

Not more than a total of \$15,966,700,000 is available to the Secretary of Transportation for the fiscal years ending September 30, 1982–1993, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505(a)(2) of this title,

and carrying out noise compatibility programs under section 47504(c) of this title.

**§48104. Certain direct costs and joint air navigation services**

(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this section, the balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated to the Secretary of Transportation out of the Fund for—

(1) direct costs the Secretary incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.

(b) LIMITATION.—The amount that may be appropriated out of the Fund for each of the fiscal years ending September 30, 1993–1995, may not be more than an amount equal to—

(1) 75 percent of the amount made available under sections 106(k) and 48101–48103 of this title for that fiscal year; less

(2) the amount made available under sections 48101–48103 of this title for that fiscal year.

**§48105. Weather reporting services**

To reimburse the Secretary of Commerce for the cost incurred by the National Oceanic and Atmospheric Administration of providing weather reporting services to the Federal Aviation Administration, the Secretary of Transportation may expend from amounts available under section 48104 of this title not more than the following amounts:

(1) for the fiscal year ending September 30, 1993, \$35,596,000.

(2) for the fiscal year ending September 30, 1994, \$37,800,000.

(3) for the fiscal year ending September 30, 1995, \$39,000,000.

**§48106. Airway science curriculum grants**

Amounts are available from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out section 44510 of this title. The amounts remain available until expended.

**§48107. Civil aviation security research and development**

After the review under section 44912(b) of this title is completed, necessary amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of

the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under section 44912(a)(4)(A).

**§ 48108. Availability and uses of amounts**

(a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts authorized under sections 48101–48105 of this title remain in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–48105.

(b) LIMITATIONS ON USES.—(1) Amounts in the Fund may be appropriated only to carry out a program or activity referred to in this chapter.

(2) Amounts in the Fund may be appropriated for administrative expenses of the Department of Transportation or a component of the Department only to the extent authorized by section 48104 of this title.

(c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal year beginning after September 30, 1995, the Secretary of Transportation may obligate or expend an amount appropriated out of the Fund under section 48104 of this title only if a law expressly amends section 48104.

**§ 48109. Submission of budget information and legislative recommendations and comments**

When the Administrator of the Federal Aviation Administration submits to the Secretary of Transportation, the President, or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or 48102 of this title, the Administrator concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Public Works and Transportation and Appropriations of the House, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

**§ 48110. Facilities for advanced training of maintenance technicians for air carrier aircraft**

For the fiscal years ending September 30, 1993–1995, amounts necessary to carry out section 44515 of this title may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502). The amounts remain available until expended.

**PART D—MISCELLANEOUS**

**CHAPTER 491—BUY-AMERICAN PREFERENCES**

Sec.

49101. Buying goods produced in the United States.

49102. Restricting contract awards because of discrimination against United States goods or services.

49103. Contract preference for domestic firms.

49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities.

49105. Fraudulent use of “Made in America” label.

# **§ 49101. Buying goods produced in the United States**

(a) PREFERENCE.—The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) WAIVER.—The Secretary may waive subsection (a) of this section if the Secretary finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3) when procuring a facility or equipment under section 44502(a)(2) or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title—

(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B) final assembly of the facility or equipment has occurred in the United States; or

(4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c) LABOR COSTS.—In this section, labor costs involved in final assembly are not included in calculating the cost of components.

# **§ 49102. Restricting contract awards because of discrimination against United States goods or services**

A person or enterprise domiciled or operating under the laws of a foreign country may not make a contract or subcontract under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) if the government of that country unfairly maintains, in government procurement, a significant and persistent pattern of discrimination against United States goods or services that results in identifiable harm to United



States businesses, that the President identifies under section 305(g)(1)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

**§ 49103. Contract preference for domestic firms**

(a) DEFINITIONS.—In this section—

(1) “domestic firm” means a business entity incorporated, and conducting business, in the United States.

(2) “foreign firm” means a business entity not described in clause (1) of this subsection.

(b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the Administrator of the Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if—

(1) the Administrator decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) NONAPPLICATION.—Subsection (b) of this section does not apply if—

(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a contract related to a grant made under section 44511, 44512, or 44513 of this title for which—

(1) an amount is authorized by section 48102(a), (b), or (d) of this title to be made available for the fiscal years ending September 30, 1991, and September 30, 1992; and

(2) a solicitation for bid is issued after November 5, 1990.

(e) REPORT.—The Administrator shall submit a report to Congress on—

(1) contracts to which this section applies that are made with foreign firms in the fiscal years ending September 30, 1991, and September 30, 1992;

(2) the number of contracts that meet the requirements of subsection (b) of this section, but that the Trade Representative decides would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party; and

(3) the number of contracts made under this section.

**§49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities**

(a) DEFINITION AND RULES FOR CONSTRUING SECTION.—In this section—

(1) “project” has the same meaning given that term in section 47102 of this title.

(2) each foreign instrumentality and each territory and possession of a foreign country administered separately for customs purposes is a separate foreign country.

(3) an article substantially produced or manufactured in a foreign country is a product of the country.

(4) a service provided by a person that is a national of a foreign country or that is controlled by a national of a foreign country is a service of the country.

(b) LIMITATION ON USE OF AVAILABLE AMOUNTS.—(1) An amount made available under subchapter I of chapter 471 of this title (except sections 47106(d) and 47127) may not be used for a project that uses a product or service of a foreign country during any period the country is on the list maintained by the United States Trade Representative under subsection (d)(1) of this section.

(2) Paragraph (1) of this subsection does not apply when the Secretary of Transportation decides that—

(A) applying paragraph (1) to the product, service, or project is not in the public interest;

(B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and

(C) the project cost will increase by more than 20 percent if the product or service is excluded.

(c) DECISIONS ON DENIAL OF FAIR MARKET OPPORTUNITIES.—Not later than 30 days after a report is submitted to Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the Trade Representative, for a construction project of more than \$500,000 for which the government of a foreign country supplies any part of the amount, shall decide

whether the foreign country denies fair market opportunities for products and suppliers of the United States in procurement or for United States bidders. In making the decision, the Trade Representative shall consider information obtained in preparing the report and other information the Trade Representative considers relevant.

(d) LIST OF COUNTRIES DENYING FAIR MARKET OPPORTUNITIES.—(1) The Trade Representative shall maintain a list of each foreign country the Trade Representative finds under subsection (c) of this section is denying fair market opportunities. The country shall remain on the list until the Trade Representative decides the country provides fair market opportunities.

(2) The Trade Representative shall publish in the Federal Register—

(A) annually the list required under paragraph (1) of this subsection;

and

(B) any modification of the list made before the next list is published.

#### **§ 49105. Fraudulent use of “Made in America” label**

If the Secretary of Transportation decides that a person intentionally affixed a “Made in America” label to goods sold in or shipped to the United States that are not made in the United States, the Secretary shall declare the person ineligible, for not less than 3 nor more than 5 years, to receive a contract or grant from the United States Government related to a contract made under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353). The Secretary may bring a civil action to enforce this section in any district court of the United States.

### **SUBTITLE VIII—PIPELINES**

CHAPTER	Sec.
601. SAFETY .....	60101
603. USER FEES .....	60301
605. INTERSTATE COMMERCE REGULATION .....	60501

#### **CHAPTER 601—SAFETY**

Sec.
60101. Definitions.
60102. General authority.
60103. Standards for liquefied natural gas pipeline facilities.
60104. Requirements and limitations.
60105. State certifications.
60106. State agreements.
60107. State grants.
60108. Inspection and maintenance.
60109. High-density population areas and environmentally sensitive areas.
60110. Excess flow valves.
60111. Financial responsibility for liquefied natural gas facilities.

- 60112. Pipeline facilities hazardous to life and property.
- 60113. Customer-owned natural gas service lines.
- 60114. One-call notification systems.
- 60115. Technical safety standards committees.
- 60116. Public education programs.
- 60117. Administrative.
- 60118. Compliance and waivers.
- 60119. Judicial review.
- 60120. Enforcement.
- 60121. Actions by private persons.
- 60122. Civil penalties.
- 60123. Criminal penalties.
- 60124. Annual reports.
- 60125. Authorization of appropriations.

## **§ 60101. Definitions**

(a) In this chapter—

(1) “existing liquefied natural gas facility”—

(A) means a liquefied natural gas facility for which an application to approve the site, construction, or operation of the facility was filed before March 1, 1978, with—

(i) the Federal Energy Regulatory Commission (or any predecessor); or

(ii) the appropriate State or local authority, if the facility is not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a facility on which construction is begun after November 29, 1979, without the approval.

(2) “gas” means natural gas, flammable gas, or toxic or corrosive gas.

(3) “gas pipeline facility” includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.

(4) “hazardous liquid” means—

(A) petroleum or a petroleum product; and

(B) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas).

(5) “hazardous liquid pipeline facility” includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.

(6) “interstate gas pipeline facility”—

(A) means a gas pipeline facility—

(i) used to transport gas; and

(ii) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

1 (B) does not include a gas pipeline facility transporting gas  
 2 from an interstate gas pipeline in a State to a direct sales cus-  
 3 tomer in that State buying gas for its own consumption.

4 (7) “interstate hazardous liquid pipeline facility” means a hazardous  
 5 liquid pipeline facility used to transport hazardous liquid in interstate  
 6 or foreign commerce.

7 (8) “interstate or foreign commerce”—

8 (A) related to gas, means commerce—

9 (i) between a place in a State and a place outside that  
 10 State; or

11 (ii) that affects any commerce described in subclause (A)(i)  
 12 of this clause; and

13 (B) related to hazardous liquid, means commerce between—

14 (i) a place in a State and a place outside that State; or

15 (ii) places in the same State through a place outside the  
 16 State.

17 (9) “intrastate gas pipeline facility” means—

18 (A) a gas pipeline facility and transportation of gas within a  
 19 State not subject to the jurisdiction of the Commission under the  
 20 Natural Gas Act (15 U.S.C. 717 et seq.); and

21 (B) a gas pipeline facility transporting gas from an interstate  
 22 gas pipeline in a State to a direct sales customer in that State  
 23 buying gas for its own consumption.

24 (10) “intrastate hazardous liquid pipeline facility” means a hazard-  
 25 ous liquid pipeline facility that is not an interstate hazardous liquid  
 26 pipeline facility.

27 (11) “liquefied natural gas” means natural gas in a liquid or semi-  
 28 solid state.

29 (12) “liquefied natural gas accident” means a release, burning, or  
 30 explosion of liquefied natural gas from any cause, except a release,  
 31 burning, or explosion that, under regulations prescribed by the Sec-  
 32 retary, does not pose a threat to public health or safety, property, or  
 33 the environment.

34 (13) “liquefied natural gas conversion” means conversion of natural  
 35 gas into liquefied natural gas or conversion of liquefied natural gas into  
 36 natural gas.

37 (14) “liquefied natural gas pipeline facility”—

38 (A) means a gas pipeline facility used for transporting or stor-  
 39 ing liquefied natural gas, or for liquefied natural gas conversion,  
 40 in interstate or foreign commerce; but

1 (B) does not include any part of a structure or equipment lo-  
 2 cated in navigable waters (as defined in section 3 of the Federal  
 3 Power Act (16 U.S.C. 796)).

4 (15) “municipality” means a political subdivision of a State.

5 (16) “new liquefied natural gas pipeline facility” means a liquefied  
 6 natural gas pipeline facility except an existing liquefied natural gas  
 7 pipeline facility.

8 (17) “person”, in addition to its meaning under section 1 of title 1  
 9 (except as to societies), includes a State, a municipality, and a trustee,  
 10 receiver, assignee, or personal representative of a person.

11 (18) “pipeline facility” means a gas pipeline facility and a hazardous  
 12 liquid pipeline facility.

13 (19) “pipeline transportation” means transporting gas and trans-  
 14 porting hazardous liquid.

15 (20) “State” means a State of the United States, the District of Co-  
 16 lumbia, and Puerto Rico.

17 (21) “transporting gas”—

18 (A) means the gathering, transmission, or distribution of gas by  
 19 pipeline, or the storage of gas, in interstate or foreign commerce;  
 20 but

21 (B) does not include gathering gas in a rural area outside a  
 22 populated area designated by the Secretary as a nonrural area.

23 (22) “transporting hazardous liquid”—

24 (A) means the movement of hazardous liquid by pipeline, or the  
 25 storage of hazardous liquid incidental to the movement of hazard-  
 26 ous liquid by pipeline, in or affecting interstate or foreign com-  
 27 merce; but

28 (B) does not include moving hazardous liquid through—

29 (i) gathering lines in a rural area;

30 (ii) onshore production, refining, or manufacturing facili-  
 31 ties; or

32 (iii) storage or in-plant piping systems associated with on-  
 33 shore production, refining, or manufacturing facilities.

34 (b) GATHERING LINES.—(1)(A) Not later than October 24, 1994, the  
 35 Secretary shall define by regulation the term “gathering line”.

36 (B) In defining “gathering line” for gas, the Secretary—

37 (i) shall consider functional and operational characteristics of the  
 38 lines to be included in the definition; and

39 (ii) is not bound by a classification the Commission establishes under  
 40 the Natural Gas Act (15 U.S.C. 717 et seq.).

(2)(A) Not later than October 24, 1995, the Secretary shall define by regulation the term “regulated gathering line”. In defining the term, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.

(B)(i) The Secretary also shall consider diameter when defining “regulated gathering line” for hazardous liquid.

(ii) The definition of “regulated gathering line” for hazardous liquid may not include a crude oil gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage.

#### **§60102. General authority**

(a)(1) MINIMUM SAFETY STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(A) apply to transporters of gas and hazardous liquid and to owners and operators of pipeline facilities;

(B) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(C) shall include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to operate and maintain those facilities.

(2) As the Secretary considers appropriate, the operator of a pipeline facility may make the certification under paragraph (1)(C) of this subsection. Testing and certification under paragraph (1)(C) shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—A standard prescribed under subsection (a) of this section shall be practicable and designed to meet the need for gas pipeline safety, for safely transporting hazardous liquid, and for protecting the environment. Except as provided in section 60103 of this title, when prescribing the standard the Secretary shall consider—

(1) relevant available—

(A) gas pipeline safety information; or

(B) hazardous liquid pipeline information;

(2) the appropriateness of the standard for the particular type of pipeline transportation or facility;

(3) the reasonableness of the standard; and

(4) the extent to which the standard will contribute to public safety and the protection of the environment.

(c) PUBLIC SAFETY PROGRAM REQUIREMENTS.—(1) The Secretary shall include in the standards prescribed under subsection (a) of this section a requirement that an operator of a gas pipeline facility participate in a public safety program that—

(A) notifies an operator of proposed demolition, excavation, tunneling, or construction near or affecting the facility;

(B) requires an operator to identify a pipeline facility that may be affected by the proposed demolition, excavation, tunneling, or construction, to prevent damaging the facility; and

(C) the Secretary decides will protect a facility adequately against a hazard caused by demolition, excavation, tunneling, or construction.

(2) To the extent a public safety program referred to in paragraph (1) of this subsection is not available, the Secretary shall prescribe standards requiring an operator to take action the Secretary prescribes to provide services comparable to services that would be available under a public safety program.

(3) The Secretary may include in the standards prescribed under subsection (a) of this section a requirement that an operator of a hazardous liquid pipeline facility participate in a public safety program meeting the requirements of paragraph (1) of this subsection or maintain and carry out a damage prevention program that provides services comparable to services that would be available under a public safety program.

(d) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain, to the extent practicable, information related to operating the facility and, when requested, to provide the information to the Secretary and an appropriate State official. The information shall include—

(1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator;

(2) accurate maps and a supplementary geographic description, including an identification of areas described in regulations prescribed under section 60109 of this title, that show the location in the State of—

(A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and

(B) major hazardous liquid pipeline facilities of the operator;

(3) a description of—



1 (A) the characteristics of the operator's pipelines in the State;  
 2 and

3 (B) products transported through the operator's pipelines in the  
 4 State;

5 (4) the manual that governs operating and maintaining pipeline fa-  
 6 cilities in the State;

7 (5) an emergency response plan describing the operator's procedures  
 8 for responding to and containing releases, including—

9 (A) identifying specific action the operator will take on discover-  
 10 ing a release;

11 (B) liaison procedures with State and local authorities for emer-  
 12 gency response; and

13 (C) communication and alert procedures for immediately notify-  
 14 ing State and local officials at the time of a release; and

15 (6) other information the Secretary considers useful to inform a  
 16 State of the presence of pipeline facilities and operations in the State.

17 (e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe mini-  
 18 mum standards requiring an operator of a pipeline facility subject to this  
 19 chapter and, to the extent the Secretary considers necessary, an operator  
 20 of a gathering line that is not a regulated gathering line (as defined under  
 21 section 60101(b)(2) of this title), to maintain for the Secretary, to the ex-  
 22 tent practicable, an inventory with appropriate information about the types  
 23 of pipe used for the transmission of gas or hazardous liquid, as appropriate,  
 24 in the operator's system and additional information, including the material's  
 25 history and the leak history of the pipe. The inventory—

26 (1) for a gas pipeline facility, shall include an identification of each  
 27 facility passing through an area described in regulations prescribed  
 28 under section 60109 of this title but shall exclude equipment used with  
 29 the compression of gas; and

30 (2) for a hazardous liquid pipeline facility, shall include an identifica-  
 31 tion of each facility and gathering line passing through an area de-  
 32 scribed in regulations prescribed under section 60109 of this title,  
 33 whether the facility or gathering line otherwise is subject to this chap-  
 34 ter, but shall exclude equipment associated only with the pipeline  
 35 pumps or storage facilities.

36 (f) STANDARDS AS ACCOMMODATING "SMART PIGS".—(1) The Secretary  
 37 shall prescribe minimum safety standards requiring that the design and con-  
 38 struction of a new gas pipeline transmission facility or hazardous liquid  
 39 pipeline facility, and the required replacement of an existing gas pipeline  
 40 transmission facility, hazardous liquid pipeline facility, or equipment, be car-  
 41 ried out, to the extent practicable, in a way that accommodates the passage

1 through the facility of an instrumented internal inspection device (commonly  
 2 referred to as a “smart pig”). The Secretary may apply the standard to an  
 3 existing gas or hazardous liquid transmission facility and require the facility  
 4 to be changed to allow the facility to be inspected with an instrumented in-  
 5 ternal inspection device if the basic construction of the facility will accom-  
 6 modate the device.

7 (2) Not later than October 24, 1995, the Secretary shall prescribe regula-  
 8 tions requiring the periodic inspection of each pipeline the operator of the  
 9 pipeline identifies under section 60109 of this title. The regulations shall  
 10 include any circumstances under which an inspection shall be conducted  
 11 with an instrumented internal inspection device and, if the device is not re-  
 12 quired, use of an inspection method that is at least as effective as using  
 13 the device in providing for the safety of the pipeline.

14 (g) EFFECTIVE DATES.—A standard prescribed under this section and  
 15 section 60110 of this title is effective on the 30th day after the Secretary  
 16 prescribes the standard. However, the Secretary for good cause may pre-  
 17 scribe a different effective date when required because of the time reason-  
 18 ably necessary to comply with the standard. The different date must be  
 19 specified in the regulation prescribing the standard.

20 (h) SAFETY CONDITION REPORTS.—(1) The Secretary shall prescribe  
 21 regulations requiring each operator of a pipeline facility (except a master  
 22 meter) to submit to the Secretary a written report on any—

23 (A) condition that is a hazard to life, property, or the environment;  
 24 and

25 (B) safety-related condition that causes or has caused a significant  
 26 change or restriction in the operation of a pipeline facility.

27 (2) The Secretary must receive the report not later than 5 working days  
 28 after a representative of a person to which this section applies first estab-  
 29 lishes that the condition exists. Notice of the condition shall be given con-  
 30 currently to appropriate State authorities.

31 (i) CARBON DIOXIDE REGULATION.—The Secretary shall regulate carbon  
 32 dioxide transported by a hazardous liquid pipeline facility. The Secretary  
 33 shall prescribe regulations related to hazardous liquid to ensure the safe  
 34 transportation of carbon dioxide by such a facility.

35 (j) EMERGENCY FLOW RESTRICTING DEVICES.—(1) Not later than Octo-  
 36 ber 24, 1994, the Secretary shall survey and assess the effectiveness of  
 37 emergency flow restricting devices (including remotely controlled valves and  
 38 check valves) and other procedures, systems, and equipment used to detect  
 39 and locate hazardous liquid pipeline ruptures and minimize product releases  
 40 from hazardous liquid pipeline facilities.

(2) Not later than 2 years after the survey and assessment are completed, the Secretary shall prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or other procedure, system, or equipment described in paragraph (1) of this subsection on the facility.

(k) PROHIBITION AGAINST LOW INTERNAL STRESS EXCEPTION.—The Secretary may not provide an exception to this chapter for a hazardous liquid pipeline facility only because the facility operates at low internal stress.

**§60103. Standards for liquefied natural gas pipeline facilities**

(a) LOCATION STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for deciding on the location of a new liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider the—

(1) kind and use of the facility;

(2) existing and projected population and demographic characteristics of the location;

(3) existing and proposed land use near the location;

(4) natural physical aspects of the location;

(5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; and

(6) need to encourage remote siting.

(b) DESIGN, INSTALLATION, CONSTRUCTION, INSPECTION, AND TESTING STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for designing, installing, constructing, initially inspecting, and initially testing a new liquefied natural gas pipeline facility. When prescribing a standard, the Secretary shall consider—

(1) the characteristics of material to be used in constructing the facility and of alternative material;

(2) design factors;

(3) the characteristics of the liquefied natural gas to be stored or converted at, or transported by, the facility; and

(4) the public safety factors of the design and of alternative designs, particularly the ability to prevent and contain a liquefied natural gas spill.

(c) NONAPPLICATION.—(1) Except as provided in paragraph (2) of this subsection, a design, location, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, does not apply to an existing liquefied natural gas pipeline facility if the standard is to be applied because of authority given—

(A) under this chapter; or

1 (B) under another law, and the standard is not prescribed at the  
2 time the authority is applied.

3 (2)(A) Any design, installation, construction, initial inspection, or initial  
4 testing standard prescribed under this chapter after March 1, 1978, may  
5 provide that the standard applies to any part of a replacement component  
6 of a liquefied natural gas pipeline facility if the component or part is placed  
7 in service after the standard is prescribed and application of the standard—

8 (i) does not make the component or part incompatible with other  
9 components or parts; or

10 (ii) is not impracticable otherwise.

11 (B) Any location standard prescribed under this chapter after March 1,  
12 1978, does not apply to any part of a replacement component of an existing  
13 liquefied natural gas pipeline facility.

14 (3) A design, installation, construction, initial inspection, or initial testing  
15 standard does not apply to a liquefied natural gas pipeline facility existing  
16 when the standard is adopted.

17 (d) OPERATION AND MAINTENANCE STANDARDS.—The Secretary of  
18 Transportation shall prescribe minimum operating and maintenance stand-  
19 ards for a liquefied natural gas pipeline facility. In prescribing a standard,  
20 the Secretary shall consider—

21 (1) the conditions, features, and type of equipment and structures  
22 that make up or are used in connection with the facility;

23 (2) the fire prevention and containment equipment at the facility;

24 (3) security measures to prevent an intentional act that could cause  
25 a liquefied natural gas accident;

26 (4) maintenance procedures and equipment;

27 (5) the training of personnel in matters specified by this subsection;  
28 and

29 (6) other factors and conditions related to the safe handling of lique-  
30 fied natural gas.

31 (e) EFFECTIVE DATES.—A standard prescribed under this section is ef-  
32 fective on the 30th day after the Secretary of Transportation prescribes the  
33 standard. However, the Secretary for good cause may prescribe a different  
34 effective date when required because of the time reasonably necessary to  
35 comply with the standard. The different date must be specified in the regu-  
36 lation prescribing the standard.

37 (f) CONTINGENCY PLANS.—A new liquefied natural gas pipeline facility  
38 may be operated only after the operator submits an adequate contingency  
39 plan that states the action to be taken if a liquefied natural gas accident  
40 occurs. The Secretary of Energy or appropriate State or local authority  
41 shall decide if the plan is adequate.

(g) EFFECT ON OTHER STANDARDS.—This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility) associated with a liquefied natural gas pipeline facility.

**§ 60104. Requirements and limitations**

(a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) PREEMPTION.—A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.

(d) CONSULTATION.—(1) When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

**§ 60105. State certifications**

(a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in this section and sections 60114 and 60121 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation) that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

(b) CONTENTS.—Each certification submitted under subsection (a) of this section shall state that the State authority—

(1) has regulatory jurisdiction over the standards and practices to which the certification applies;

(2) has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;

(3) is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title;

(4) is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies;

(5) may require record maintenance, reporting, and inspection substantially the same as provided under section 60117 of this title;

(6) may require that plans for inspection and maintenance under section 60108(a) and (b) of this title be filed for approval; and

(7) may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections 60120 and 60122(a)(1) and (b)–(f) of this title.

(c) REPORTS.—(1) Each certification submitted under subsection (a) of this section shall include a report that contains—

(A) the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;

(B) each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than an amount the Secretary establishes (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety

jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;

(C) the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and

(D) any other information the Secretary requires.

(2) The report included in the first certification submitted under subsection (a) of this section is only required to state information available at the time of certification.

(d) APPLICATION.—A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification until the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.

(f) REJECTIONS OF CERTIFICATION.—If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.

## **§ 60106. State agreements**

(a) GENERAL AUTHORITY.—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

1 (2) prescribe procedures for approval of plans of inspection and  
 2 maintenance substantially the same as required under section 60108(a)  
 3 and (b) of this title.

4 (b) NOTIFICATION.—Each agreement shall require the State authority to  
 5 notify the Secretary promptly of a violation or probable violation of an ap-  
 6 plicable safety standard discovered as a result of action taken in carrying  
 7 out an agreement under this section.

8 (c) MONITORING.—The Secretary may monitor a safety program estab-  
 9 lished under this section to ensure that the program complies with the  
 10 agreement. A State authority shall cooperate with the Secretary under this  
 11 subsection.

12 (d) ENDING AGREEMENTS.—The Secretary may end an agreement made  
 13 under this section when the Secretary finds that the State authority has not  
 14 complied with any provision of the agreement. The Secretary shall give the  
 15 authority notice and an opportunity for a hearing before ending an agree-  
 16 ment. The finding and decision to end the agreement shall be published in  
 17 the Federal Register and may not become effective for at least 15 days after  
 18 the date of publication.

19 **§ 60107. State grants**

20 (a) GENERAL AUTHORITY.—If a State authority files an application not  
 21 later than September 30 of a calendar year, the Secretary of Transportation  
 22 shall pay not more than 50 percent of the cost of the personnel, equipment,  
 23 and activities the authority reasonably requires during the next calendar  
 24 year—

25 (1) to carry out a safety program under a certification under section  
 26 60105 of this title or an agreement under section 60106 of this title;  
 27 or

28 (2) to act as an agent of the Secretary on interstate gas pipeline  
 29 transmission facilities or interstate hazardous liquid pipeline facilities.

30 (b) PAYMENTS.—After notifying and consulting with a State authority,  
 31 the Secretary may withhold any part of a payment when the Secretary de-  
 32 cides that the authority is not carrying out satisfactorily a safety program  
 33 or not acting satisfactorily as an agent. The Secretary may pay an authority  
 34 under this section only when the authority ensures the Secretary that it will  
 35 provide the remaining costs of a safety program and that the total State  
 36 amount spent for a safety program (excluding grants of the United States  
 37 Government) will at least equal the average amount spent—

38 (1) for a gas safety program, for the fiscal years that ended June  
 39 30, 1967, and June 30, 1968; and

40 (2) for a hazardous liquid safety program, for the fiscal years that  
 41 ended September 30, 1978, and September 30, 1979.



(c) APPORTIONMENT AND METHOD OF PAYMENT.—The Secretary shall apportion the amount appropriated to carry out this section among the States. A payment may be made under this section in installments, in advance, or on a reimbursable basis.

(d) ADDITIONAL AUTHORITY AND CONSIDERATIONS.—(1) The Secretary may prescribe—

(A) the form of, and way of filing, an application under this section;

(B) reporting and fiscal procedures the Secretary considers necessary to ensure the proper accounting of money of the Government; and

(C) qualifications for a State to meet to receive a payment under this section, including qualifications for State employees who perform inspection activities under section 60105 or 60106 of this title.

(2) The qualifications prescribed under paragraph (1)(C) of this subsection may—

(A) consider the experience and training of the employee;

(B) order training or other requirements; and

(C) provide for approval of qualifications on a conditional basis until specified requirements are met.

#### **§ 60108. Inspection and maintenance**

(a) PLANS.—(1) Each person transporting gas or hazardous liquid or owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person transporting gas or hazardous liquid or owning or operating a pipeline facility subject to this chapter to file a plan for inspection and maintenance for approval.

(2) If the Secretary or a State authority responsible for enforcing standards prescribed under this chapter decides that a plan required under paragraph (1) of this subsection is inadequate for safe operation, the Secretary or authority shall require the person to revise the plan. Revision may be required only after giving notice and an opportunity for a hearing. A plan required under paragraph (1) must be practicable and designed to meet the need for pipeline safety and must include terms designed to enhance the ability to discover safety-related conditions described in section 60102(h)(1) of this title. In deciding on the adequacy of a plan, the Secretary or authority shall consider—

(A) relevant available pipeline safety information;

(B) the appropriateness of the plan for the particular kind of pipeline transportation or facility;

(C) the reasonableness of the plan; and

(D) the extent to which the plan will contribute to public safety and the protection of the environment.

(3) A plan required under this subsection shall be made available to the Secretary or State authority on request under section 60117 of this title.

(b) INSPECTION AND TESTING.—(1) The Secretary shall inspect and require appropriate testing of a pipeline facility subject to this chapter that is not covered by a certification under section 60105 of this title or an agreement under section 60106 of this title. The Secretary shall decide on the frequency and type of inspection and testing under this subsection on a case-by-case basis after considering the following:

(A) the location of the pipeline facility.

(B) the type, size, age, manufacturer, method of construction, and condition of the pipeline facility.

(C) the nature and volume of material transported through the pipeline facility.

(D) the pressure at which that material is transported.

(E) climatic, geologic, and seismic characteristics (including soil characteristics) and conditions of the area in which the pipeline facility is located.

(F) existing and projected population and demographic characteristics of the area in which the pipeline facility is located.

(G) for a hazardous liquid pipeline facility, the proximity of the area in which the facility is located to an area that is unusually sensitive to environmental damage.

(H) the frequency of leaks.

(I) other factors the Secretary decides are relevant to the safety of pipeline facilities.

(2) To the extent and in amounts provided in advance in an appropriation law, the Secretary shall decide on the frequency of inspection under paragraph (1) of this subsection. However, an inspection must occur at least once every 2 years. The Secretary may reduce the frequency of an inspection of a master meter system.

(3) Testing under this subsection shall use the most appropriate technology practicable.

(c) PIPELINE FACILITIES OFFSHORE AND IN NAVIGABLE WATERS.—(1) In this subsection—

(A) “abandoned” means permanently removed from service.

(B) “pipeline facility” includes an underwater abandoned pipeline facility.

1 (C) if a pipeline facility has no operator, the most recent operator  
2 of the facility is deemed to be the operator of the facility.

3 (2)(A) Not later than May 16, 1993, on the basis of experience with the  
4 inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act  
5 of 1968 or section 203(I)(1)(A) of the Hazardous Liquid Pipeline Safety  
6 Act of 1979, as appropriate, and any other information available to the Sec-  
7 retary, the Secretary shall establish a mandatory, systematic, and, where  
8 appropriate, periodic inspection program of—

9 (i) all offshore pipeline facilities; and

10 (ii) any other pipeline facility crossing under, over, or through navi-  
11 gable waters (as defined by the Secretary) if the Secretary decides that  
12 the location of the facility in those navigable waters could pose a haz-  
13 ard to navigation or public safety.

14 (B) In prescribing regulations to carry out subparagraph (A) of this para-  
15 graph—

16 (i) the Secretary shall identify what is a hazard to navigation with  
17 respect to an underwater abandoned pipeline facility; and

18 (ii) for an underwater pipeline facility abandoned after October 24,  
19 1992, the Secretary shall include requirements that will lessen the po-  
20 tential that the facility will pose a hazard to navigation and shall con-  
21 sider the relationship between water depth and navigational safety and  
22 factors relevant to the local marine environment.

23 (3)(A) The Secretary shall establish by regulation a program requiring  
24 an operator of a pipeline facility described in paragraph (2) of this sub-  
25 section to report a potential or existing navigational hazard involving that  
26 pipeline facility to the Secretary through the appropriate Coast Guard of-  
27 fice.

28 (B) The operator of a pipeline facility described in paragraph (2) of this  
29 subsection that discovers any part of the pipeline facility that is a hazard  
30 to navigation shall mark the location of the hazardous part with a Coast-  
31 Guard-approved marine buoy or marker and immediately shall notify the  
32 Secretary as provided by the Secretary under subparagraph (A) of this  
33 paragraph. A marine buoy or marker used under this subparagraph is  
34 deemed a pipeline sign or right-of-way marker under section 60123(c) of  
35 this title.

36 (4)(A) The Secretary shall require by regulation that each pipeline facility  
37 described in paragraph (2) of this subsection that is a hazard to navigation  
38 is buried not later than 6 months after the date the condition of the facility  
39 is reported to the Secretary. The Secretary may extend that 6-month period  
40 for a reasonable period to ensure compliance with this paragraph.

1 (B) In prescribing regulations for subparagraph (A) of this paragraph for  
2 an underwater pipeline facility abandoned after October 24, 1992, the Sec-  
3 retary shall include requirements that will lessen the potential that the facil-  
4 ity will pose a hazard to navigation and shall consider the relationship be-  
5 tween water depth and navigational safety and factors relevant to the local  
6 marine environment.

7 (5)(A) Not later than October 24, 1994, the Secretary shall establish  
8 standards on what is an exposed offshore pipeline facility and what is a haz-  
9 ard to navigation under this subsection.

10 (B) Not later than 6 months after the Secretary establishes standards  
11 under subparagraph (A) of this paragraph, or October 24, 1995, whichever  
12 occurs first, the operator of each offshore pipeline facility not described in  
13 section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or sec-  
14 tion 203(I)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as  
15 appropriate, shall inspect the facility and report to the Secretary on any  
16 part of the facility that is exposed or is a hazard to navigation. This sub-  
17 paragraph applies only to a facility that is between the high water mark  
18 and the point at which the subsurface is under 15 feet of water, as meas-  
19 ured from mean low water. An inspection that occurred after October 3,  
20 1989, may be used for compliance with this subparagraph if the inspection  
21 conforms to the requirements of this subparagraph.

22 (C) The Secretary may extend the time period specified in subparagraph  
23 (B) of this paragraph for not more than 6 months if the operator of a facil-  
24 ity satisfies the Secretary that the operator has made a good faith effort,  
25 with reasonable diligence, but has been unable to comply by the end of that  
26 period.

27 (6)(A) The operator of a pipeline facility abandoned after October 24,  
28 1992, shall report the abandonment to the Secretary in a way that specifies  
29 whether the facility has been abandoned properly according to applicable  
30 United States Government and State requirements.

31 (B) Not later than October 24, 1995, the operator of a pipeline facility  
32 abandoned before October 24, 1992, shall report to the Secretary reasonably  
33 available information related to the facility, including information that a  
34 third party possesses. The information shall include the location, size, date,  
35 and method of abandonment, whether the facility has been abandoned prop-  
36 erly under applicable law, and other relevant information the Secretary may  
37 require. Not later than April 24, 1994, the Secretary shall specify how the  
38 information shall be reported. The Secretary shall ensure that the Govern-  
39 ment maintains the information in a way accessible to appropriate Govern-  
40 ment agencies and State authorities.

(C) The Secretary shall request that a State authority having information on a collision between a vessel and an underwater pipeline facility report the information to the Secretary in a timely way and make a reasonable effort to specify the location, date, and severity of the collision. Chapter 35 of title 44 does not apply to this subparagraph.

(7) The Secretary may not exempt from this chapter an offshore hazardous liquid pipeline facility only because the pipeline facility transfers hazardous liquid in an underwater pipeline between a vessel and an onshore facility.

(d) REPLACING CAST IRON GAS PIPELINES.—(1) The Secretary shall publish a notice on the availability of industry guidelines, developed by the Gas Piping Technology Committee, for replacing cast iron pipelines. Not later than 2 years after the guidelines become available, the Secretary shall conduct a survey of gas pipeline operators with cast iron pipe in their systems to establish—

(A) the extent to which each operator has adopted a plan for the safe management and replacement of cast iron;

(B) the elements of the plan, including the anticipated rate of replacement; and

(C) the progress that has been made.

(2) Chapter 35 of title 44 does not apply to the conduct of the survey.

(3) This subsection does not prevent the Secretary from developing Government guidelines or regulations for cast iron gas pipelines as the Secretary considers appropriate.

**§ 60109. High-density population areas and environmentally sensitive areas**

(a) IDENTIFICATION REQUIREMENTS.—Not later than October 24, 1994, the Secretary of Transportation shall prescribe regulations that—

(1) establish criteria for identifying—

(A) by operators of gas pipeline facilities, each gas pipeline facility (except a natural gas distribution line) located in a high-density population area; and

(B) by operators of hazardous liquid pipeline facilities and gathering lines—

(i) each hazardous liquid pipeline facility, whether otherwise subject to this chapter, that crosses a navigable waterway (as the Secretary defines by regulation) or that is located in an area described in the criteria as a high-density population area; and

(ii) each hazardous liquid pipeline facility and gathering line, whether otherwise subject to this chapter, located in an

area that the Secretary, in consultation with the Administrator of the Environmental Protection Agency, describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident; and

(2) provide that the identification be carried out through the inventory required under section 60102(c) of this title.

(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing an area that is unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider including—

(1) earthquake zones and areas subject to landslides and other substantial ground movements;

(2) areas of likely ground water contamination if a hazardous liquid pipeline facility ruptures;

(3) freshwater lakes, rivers, and waterways; and

(4) river deltas and other areas subject to soil erosion or subsidence from flooding or other water action where a hazardous liquid pipeline facility is likely to become exposed or undermined.

#### **§ 60110. Excess flow valves**

(a) APPLICATION.—This section applies only to—

(1) a natural gas distribution system installed after the effective date of regulations prescribed under this section; and

(2) any other natural gas distribution system when repair to the system requires replacing a part to accommodate installing excess flow valves.

(b) INSTALLATION REQUIREMENTS AND CONSIDERATIONS.—Not later than April 24, 1994, the Secretary of Transportation shall prescribe regulations on the circumstances under which an operator of a natural gas distribution system must install excess flow valves in the system. The Secretary shall consider—

(1) the system design pressure;

(2) the system operating pressure;

(3) the types of customers to which the distribution system supplies gas, including hospitals, schools, and commercial enterprises;

(4) the technical feasibility and cost of installing the valve;

(5) the public safety benefits of installing the valve;

(6) the location of customer meters; and

(7) other factors the Secretary considers relevant.

(c) NOTIFICATION OF AVAILABILITY.—(1) Not later than October 24, 1994, the Secretary shall prescribe regulations requiring an operator of a natural gas distribution system to notify in writing its customers having

1 lines in which excess flow valves are not required by law but can be installed  
 2 according to the standards prescribed under subsection (e) of this section,  
 3 of—

4 (A) the availability of excess flow valves for installation in the sys-  
 5 tem;

6 (B) safety benefits to be derived from installation; and

7 (C) costs associated with installation.

8 (2) The regulations shall provide that, except when installation is required  
 9 under subsection (b) of this section, excess flow valves shall be installed at  
 10 the request of the customer if the customer will pay all costs associated with  
 11 installation.

12 (d) REPORT.—If the Secretary decides under subsection (b) of this sec-  
 13 tion that there are no circumstances under which an operator must install  
 14 excess flow valves, the Secretary shall submit to Congress a report on the  
 15 reasons for the decision not later than 30 days after the decision is made.

16 (e) PERFORMANCE STANDARDS.—Not later than April 24, 1994, the Sec-  
 17 retary shall develop standards for the performance of excess flow valves  
 18 used to protect lines in a natural gas distribution system. The standards  
 19 shall be incorporated into regulations the Secretary prescribes under this  
 20 section. All excess flow valves shall be installed according to the standards.

21 **§60111. Financial responsibility for liquefied natural gas fa-**  
 22 **cilities**

23 (a) NOTICE.—When the Secretary of Transportation believes that an op-  
 24 erator of a liquefied natural gas facility does not have adequate financial  
 25 responsibility for the facility, the Secretary may issue a notice to the opera-  
 26 tor about the inadequacy and the amount of financial responsibility the Sec-  
 27 retary considers adequate.

28 (b) HEARINGS.—An operator receiving a notice under subsection (a) of  
 29 this section may have a hearing on the record not later than 30 days after  
 30 receiving the notice. The operator may show why the Secretary should not  
 31 issue an order requiring the operator to demonstrate and maintain financial  
 32 responsibility in at least the amount the Secretary considers adequate.

33 (c) ORDERS.—After an opportunity for a hearing on the record, the Sec-  
 34 retary may issue the order if the Secretary decides it is justified in the pub-  
 35 lic interest.

36 **§60112. Pipeline facilities hazardous to life and property**

37 (a) GENERAL AUTHORITY.—After notice and an opportunity for a hear-  
 38 ing, the Secretary of Transportation may decide a pipeline facility is hazard-  
 39 ous if the Secretary decides the facility is—

40 (1) hazardous to life, property, or the environment; or

1 (2) constructed or operated, or a component of the facility is con-  
 2 structed or operated, with equipment, material, or a technique the Sec-  
 3 retary decides is hazardous to life, property, or the environment.

4 (b) CONSIDERATIONS.—In making a decision under subsection (a) of this  
 5 section, the Secretary shall consider, if relevant—

6 (1) the characteristics of the pipe and other equipment used in the  
 7 pipeline facility, including the age, manufacture, physical properties,  
 8 and method of manufacturing, constructing, or assembling the equip-  
 9 ment;

10 (2) the nature of the material the pipeline facility transports, the  
 11 corrosive and deteriorative qualities of the material, the sequence in  
 12 which the material are transported, and the pressure required for  
 13 transporting the material;

14 (3) the aspects of the area in which the pipeline facility is located,  
 15 including climatic and geologic conditions and soil characteristics;

16 (4) the proximity of the area in which the hazardous liquid pipeline  
 17 facility is located to environmentally sensitive areas;

18 (5) the population density and population and growth patterns of the  
 19 area in which the pipeline facility is located;

20 (6) any recommendation of the National Transportation Safety  
 21 Board made under another law; and

22 (7) other factors the Secretary considers appropriate.

23 (c) OPPORTUNITY FOR STATE COMMENT.—The Secretary shall provide,  
 24 to any appropriate official of a State in which a pipeline facility is located  
 25 and about which a proceeding has begun under this section, notice and an  
 26 opportunity to comment on an agreement the Secretary proposes to make  
 27 to resolve the proceeding. State comment shall incorporate comments of af-  
 28 fected local officials.

29 (d) CORRECTIVE ACTION ORDERS.—If the Secretary decides under sub-  
 30 section (a) of this section that a pipeline facility is hazardous, the Secretary  
 31 shall order the operator of the facility to take necessary corrective action.

32 (e) WAIVER OF NOTICE AND HEARING IN EMERGENCY.—The Secretary  
 33 may waive the requirements for notice and an opportunity for a hearing  
 34 under this section and issue expeditiously an order under this section if the  
 35 Secretary decides failure to issue the order expeditiously will result in likely  
 36 serious harm to life, property, or the environment. An order under this sub-  
 37 section shall provide an opportunity for a hearing as soon as practicable  
 38 after the order is issued.

39 **§60113. Customer-owned natural gas service lines**

40 (a) MAINTENANCE INFORMATION.—Not later than October 24, 1993, the  
 41 Secretary of Transportation shall prescribe regulations requiring an opera-



tor of a natural gas distribution pipeline that does not maintain customer-owned natural gas service lines up to building walls to advise its customers of—

(1) the requirements for maintaining those lines;

(2) any resources known to the operator that could assist customers in carrying out the maintenance;

(3) information the operator has on operating and maintaining its lines that could assist customers; and

(4) the potential hazards of not maintaining the lines.

(b) ACTIONS TO PROMOTE SAFETY.—Not later than one year after submitting the report required under section 115(b) of the Pipeline Safety Act of 1992 (Public Law 102–508, 106 Stat. 3296), the Secretary, considering the report and in cooperation and coordination with appropriate State and local authorities, shall take appropriate action to promote the adoption of measures to improve the safety of customer-owned natural gas service lines.

#### **§ 60114. One-call notification systems**

(a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:

(1) a requirement that the system apply to all areas of the State containing underground pipeline facilities.

(2) a requirement that a person intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.

(3) a requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

(4) qualifications for an operator of a facility, a private contractor, or a State or local authority to operate a system.

(5) procedures for advertisement and notice of the availability of a system.

(6) a requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.

(7) a requirement for the response of the operator of the system and of the facility after they are contacted by an individual under this subsection.

(8) a requirement that each State decide whether the system will be toll free.

1 (9) a requirement for sanctions substantially the same as provided  
2 under sections 60120, 60122, and 60123 of this title.

3 (b) GRANTS.—The Secretary may make a grant to a State under this sec-  
4 tion to develop and establish a one-call notification system consistent with  
5 subsection (a) of this section.

6 (c) MARKING FACILITIES.—On notification by an operator of a damage  
7 prevention program or by a person planning to carry out demolition, exca-  
8 vation, tunneling, or construction in the vicinity of a pipeline facility, the  
9 operator of the facility shall mark accurately, in a reasonable and timely  
10 way, the location of the pipeline facilities in the vicinity of the demolition,  
11 excavation, tunneling, or construction.

12 (d) APPORTIONMENT.—When apportioning the amount appropriated to  
13 carry out section 60107 of this title among the States, the Secretary—

14 (1) shall consider whether a State has adopted or is seeking adoption  
15 of a one-call notification system under this section; and

16 (2) shall withhold part of a payment under section 60107 of this title  
17 when the Secretary decides a State has not adopted, or is not seeking  
18 adoption of, a one-call notification system.

19 (e) RELATIONSHIP TO OTHER LAWS.—This section and regulations pre-  
20 scribed under this section do not affect the liability established under a law  
21 of the United States or a State for damage caused by an activity described  
22 in subsection (a)(2) of this section.

### 23 **§ 60115. Technical safety standards committees**

24 (a) ORGANIZATION.—The Technical Pipeline Safety Standards Committee  
25 and the Technical Hazardous Liquid Pipeline Safety Standards Committee  
26 are committees in the Department of Transportation.

27 (b) COMPOSITION AND APPOINTMENT.—(1) The Technical Pipeline Safe-  
28 ty Standards Committee is composed of 15 members appointed by the Sec-  
29 retary of Transportation after consulting with public and private agencies  
30 concerned with the technical aspect of transporting gas or operating a gas  
31 pipeline facility. Each member must be experienced in the safety regulation  
32 of transporting gas and of gas pipeline facilities or technically qualified, by  
33 training, experience, or knowledge in at least one field of engineering appli-  
34 cable to transporting gas or operating a gas pipeline facility, to evaluate gas  
35 pipeline safety standards.

36 (2) The Technical Hazardous Liquid Pipeline Safety Standards Commit-  
37 tee is composed of 15 members appointed by the Secretary after consulting  
38 with public and private agencies concerned with the technical aspect of  
39 transporting hazardous liquid or operating a hazardous liquid pipeline facil-  
40 ity. Each member must be experienced in the safety regulation of transport-  
41 ing hazardous liquid and of hazardous liquid pipeline facilities or technically

1 qualified, by training, experience, or knowledge in at least one field of engi-  
 2 neering applicable to transporting hazardous liquid or operating a hazardous  
 3 liquid pipeline facility, to evaluate hazardous liquid pipeline safety stand-  
 4 ards.

5 (3) The members of each committee are appointed as follows:

6 (A) 5 individuals selected from departments, agencies, and instru-  
 7 mentalities of the United States Government and of the States.

8 (B) 4 individuals selected from the natural gas or hazardous liquid  
 9 industry, as appropriate, after consulting with industry representatives.

10 (C) 6 individuals selected from the general public.

11 (4)(A) Two of the individuals selected for each committee under para-  
 12 graph (3)(A) of this subsection must be State commissioners. The Secretary  
 13 shall consult with the national organization of State commissions (referred  
 14 to in section 10344(f) of this title) before selecting those 2 individuals.

15 (B) At least 3 of the individuals selected for each committee under para-  
 16 graph (3)(B) of this subsection must be currently in the active operation  
 17 of natural gas pipelines or hazardous liquid pipeline facilities, as appro-  
 18 priate.

19 (C) Two of the individuals selected for each committee under paragraph  
 20 (3)(C) of this subsection must have education, background, or experience in  
 21 environmental protection or public safety. At least one individual selected  
 22 for each committee under paragraph (3)(C) may not have a financial inter-  
 23 est in the pipeline, petroleum, or natural gas industries.

24 (c) COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Sec-  
 25 retary shall give to—

26 (A) the Technical Pipeline Safety Standards Committee each stand-  
 27 ard proposed under this chapter for transporting gas and for gas pipe-  
 28 line facilities; and

29 (B) the Technical Hazardous Liquid Pipeline Safety Standards Com-  
 30 mittee each standard proposed under this chapter for transporting haz-  
 31 ardous liquid and for hazardous liquid pipeline facilities.

32 (2) Not later than 90 days after receiving the proposed standard, the ap-  
 33 propriate committee shall prepare a report on the technical feasibility, rea-  
 34 sonableness, and practicability of the proposed standard. The Secretary  
 35 shall publish each report, including minority views. The report if timely  
 36 made is part of the proceeding for prescribing the standard. The Secretary  
 37 is not bound by the conclusions of the committee. However, if the Secretary  
 38 rejects the conclusions of the committee, the Secretary shall publish the rea-  
 39 sons.

40 (3) The Secretary may prescribe a standard after the end of the 90-day  
 41 period.

(d) PROPOSED COMMITTEE STANDARDS AND POLICY DEVELOPMENT RECOMMENDATIONS.—(1) The Technical Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting gas and for gas pipeline facilities. The Technical Hazardous Liquid Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(2) If requested by the Secretary, a committee shall make policy development recommendations to the Secretary.

(e) MEETINGS.—Each committee shall meet with the Secretary at least twice annually. Each committee proceeding shall be recorded. The record of the proceeding shall be available to the public.

(f) PAY AND EXPENSES.—The Secretary may establish the pay for each member of a committee for each day (including travel time) when performing duties of the committee. However, a member may not be paid more than the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of title 5. A member is entitled to reimbursement for expenses under section 5703 of title 5. This subsection does not apply to members regularly employed by the Government. A payment under this subsection does not make a member an officer or employee of the Government.

#### **§60116. Public education programs**

Under regulations the Secretary of Transportation prescribes, each person transporting gas shall carry out a program to educate the public on the possible hazards associated with gas leaks and the importance of reporting gas odors and leaks to the appropriate authority. The Secretary may develop material suitable for use in the program.

#### **§60117. Administrative**

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—To enable the Secretary to decide whether a person transporting gas or hazardous liquid or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall—

(1) maintain records, make reports, and provide information the Secretary requires; and

1           (2) make the records, reports, and information available when the  
2           Secretary requests.

3           (c) ENTRY AND INSPECTION.—An officer, employee, or agent of the De-  
4           partment of Transportation designated by the Secretary, on display of prop-  
5           er credentials to the individual in charge, may enter premises to inspect the  
6           records and property of a person at a reasonable time and in a reasonable  
7           way to decide whether a person is complying with this chapter and stand-  
8           ards prescribed or orders issued under this chapter.

9           (d) CONFIDENTIALITY OF INFORMATION.—Information related to a con-  
10          fidential matter referred to in section 1905 of title 18 that is obtained by  
11          the Secretary or an officer, employee, or agent in carrying out this section  
12          may be disclosed only to another officer or employee concerned with carry-  
13          ing out this chapter or in a proceeding under this chapter.

14          (e) USE OF ACCIDENT REPORTS.—(1) Each accident report made by an  
15          officer, employee, or agent of the Department may be used in a judicial pro-  
16          ceeding resulting from the accident. The officer, employee, or agent may be  
17          required to testify in the proceeding about the facts developed in investigat-  
18          ing the accident. The report shall be made available to the public in a way  
19          that does not identify an individual.

20          (2) Each report related to research and demonstration projects and relat-  
21          ed activities is public information.

22          (f) TESTING FACILITIES INVOLVED IN ACCIDENTS.—The Secretary may  
23          require testing of a part of a pipeline facility subject to this chapter that  
24          has been involved in or affected by an accident only after—

25                (1) notifying the appropriate State official in the State in which the  
26                facility is located; and

27                (2) attempting to negotiate a mutually acceptable plan for testing  
28                with the owner of the facility and, when the Secretary considers appro-  
29                priate, the National Transportation Safety Board.

30          (g) PROVIDING SAFETY INFORMATION.—On request, the Secretary shall  
31          provide the Federal Energy Regulatory Commission or appropriate State  
32          authority with information the Secretary has on the safety of material, oper-  
33          ations, devices, or processes related to pipeline transportation or operating  
34          a pipeline facility.

35          (h) COOPERATION.—The Secretary may—

36                (1) advise, assist, and cooperate with other departments, agencies,  
37                and instrumentalities of the United States Government, the States, and  
38                public and private agencies and persons in planning and developing  
39                safety standards and ways to inspect and test to decide whether those  
40                standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.

(i) **PROMOTING COORDINATION.**—After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident.

(j) **WITHHOLDING INFORMATION FROM CONGRESS.**—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

#### **§60118. Compliance and waivers**

(a) **GENERAL REQUIREMENTS.**—A person transporting gas or hazardous liquid or owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section;

(2) prepare and carry out a plan for inspection and maintenance required under section 60108 (a) and (b) of this title; and

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60117(a)–(d) of this title.

(b) **COMPLIANCE ORDERS.**—The Secretary of Transportation may issue orders directing compliance with this chapter or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.

(c) **WAIVERS BY SECRETARY.**—On application of a person transporting gas or hazardous liquid or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.

(d) **WAIVERS BY STATE AUTHORITIES.**—If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to

which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

**§60119. Judicial review**

(a) REVIEW OF REGULATIONS AND WAIVER ORDERS.—(1) Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter or an order issued about an application for a waiver under section 60118 (c) or (d) of this title may apply for review of the regulation or order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under paragraph (1) is in addition to any other remedies provided by law.

(b) REVIEW OF FINANCIAL RESPONSIBILITY ORDERS.—(1) A person adversely affected by an order issued under section 60111 of this title may apply for review of the order by filing a petition for review in the appropriate court of appeals of the United States. The petition must be filed not later than 60 days after the order is issued. Findings of fact the Secretary makes are conclusive if supported by substantial evidence.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254(1) of title 28.

**§60120. Enforcement**

(a) CIVIL ACTIONS.—(1) On the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.

(2) At the request of the Secretary, the Attorney General may bring a civil action in a district court of the United States to require a person to comply immediately with a subpoena or to allow an officer, employee, or

agent authorized by the Secretary to enter the premises, and inspect the records and property, of the person to decide whether the person is complying with this chapter. The action may be brought in the judicial district in which the defendant resides, is found, or does business. The court may punish a failure to obey the order as a contempt of court.

(b) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) EFFECT ON TORT LIABILITY.—This chapter does not affect the tort liability of any person.

### **§ 60121. Actions by private persons**

(a) GENERAL AUTHORITY.—(1) A person may bring a civil action in an appropriate district court of the United States for an injunction against another person (including the United States Government and other governmental authorities to the extent permitted under the 11th amendment to the Constitution) for a violation of this chapter or a regulation prescribed or order issued under this chapter. However, the person—

(A) may bring the action only after 60 days after the person has given notice of the violation to the Secretary of Transportation or to the appropriate State authority (when the violation is alleged to have occurred in a State certified under section 60105 of this title) and to the person alleged to have committed the violation;

(B) may not bring the action if the Secretary or authority has begun and diligently is pursuing an administrative proceeding for the violation; and

(C) may not bring the action if the Attorney General of the United States, or the chief law enforcement officer of a State, has begun and diligently is pursuing a judicial proceeding for the violation.

(2) The Secretary shall prescribe the way in which notice is given under this subsection.

(3) The Secretary, with the approval of the Attorney General, or the Attorney General may intervene in an action under paragraph (1) of this subsection.

(b) COSTS AND FEES.—The court may award costs, reasonable expert witness fees, and a reasonable attorney's fee to a prevailing plaintiff in a civil action under this section. The court may award costs to a prevailing defendant when the action is unreasonable, frivolous, or meritless. In this subsection, a reasonable attorney's fee is a fee—



1 (1) based on the actual time spent and the reasonable expenses of  
 2 the attorney for legal services provided to a person under this section;  
 3 and

4 (2) computed at the rate prevailing for providing similar services for  
 5 actions brought in the court awarding the fee.

6 (c) STATE VIOLATIONS AS VIOLATIONS OF THIS CHAPTER.—In this sec-  
 7 tion, a violation of a safety standard or practice of a State is deemed to  
 8 be a violation of this chapter or a regulation prescribed or order issued  
 9 under this chapter only to the extent the standard or practice is not more  
 10 stringent than a comparable minimum safety standard prescribed under this  
 11 chapter.

12 (d) ADDITIONAL REMEDIES.—A remedy under this section is in addition  
 13 to any other remedies provided by law. This section does not restrict a right  
 14 to relief that a person or a class of persons may have under another law  
 15 or at common law.

16 **§60122. Civil penalties**

17 (a) GENERAL PENALTIES.—(1) A person that the Secretary of Transpor-  
 18 tation decides, after written notice and an opportunity for a hearing, has  
 19 violated section 60114(c) or 60118(a) of this title or a regulation prescribed  
 20 or order issued under this chapter is liable to the United States Government  
 21 for a civil penalty of not more than \$25,000 for each violation. A separate  
 22 violation occurs for each day the violation continues. The maximum civil  
 23 penalty under this paragraph for a related series of violations is \$500,000.

24 (2) A person violating a standard or order under section 60103 or 60111  
 25 of this title is liable to the Government for a civil penalty of not more than  
 26 \$50,000 for each violation. A penalty under this paragraph may be imposed  
 27 in addition to penalties imposed under paragraph (1) of this subsection.

28 (b) PENALTY CONSIDERATIONS.—In determining the amount of a civil  
 29 penalty under this section, the Secretary shall consider—

- 30 (1) the nature, circumstances, and gravity of the violation;
- 31 (2) with respect to the violator, the degree of culpability, any history  
 32 of prior violations, the ability to pay, and any effect on ability to con-  
 33 tinue doing business;
- 34 (3) good faith in attempting to comply; and
- 35 (4) other matters that justice requires.

36 (c) COLLECTION AND COMPROMISE.—(1) The Secretary may request the  
 37 Attorney General to bring a civil action in an appropriate district court of  
 38 the United States to collect a civil penalty imposed under this section.

39 (2) The Secretary may compromise the amount of a civil penalty imposed  
 40 under this section before referral to the Attorney General.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title may not be imposed under this chapter if both violations are based on the same act.

### **§ 60123. Criminal penalties**

(a) GENERAL PENALTY.—A person knowingly and willfully violating section 60114(c) or 60118(a) of this title or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) PENALTY FOR DAMAGING OR DESTROYING FACILITY.—A person knowingly and willfully damaging or destroying, or attempting to damage or destroy, an interstate transmission facility or interstate hazardous liquid pipeline facility shall be fined under title 18, imprisoned for not more than 15 years, or both.

(c) PENALTY FOR DAMAGING OR DESTROYING SIGN.—A person knowingly and willfully defacing, damaging, removing, or destroying a pipeline sign or right-of-way marker required by a law or regulation of the United States shall be fined under title 18, imprisoned for not more than one year, or both.

(d) PENALTY FOR NOT USING ONE-CALL NOTIFICATION SYSTEM OR NOT HEEDING LOCATION INFORMATION OR MARKINGS.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person knowingly and willfully—

(1) engages in an excavation activity—

(A) without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or

(B) without paying attention to appropriate location information or markings the operator of a pipeline facility establishes; and

(2) subsequently damages—

(A) a pipeline facility that results in death, serious bodily harm, or actual damage to property of more than \$50,000; or

(B) a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product.

**§ 60124. Annual reports**

(a) SUBMISSION AND CONTENTS.—The Secretary of Transportation shall submit to Congress not later than August 15 of each year a report on carrying out this chapter for the prior calendar year for gas and a report on carrying out this chapter for the prior calendar year for hazardous liquid. Each report shall include the following information about the prior year for gas or hazardous liquid, as appropriate:

(1) a thorough compilation of the leak repairs, accidents, and casualties and a statement of cause when investigated and established by the National Transportation Safety Board.

(2) a list of applicable pipeline safety standards prescribed under this chapter including identification of standards prescribed during the year.

(3) a summary of the reasons for each waiver granted under section 60118 (c) and (d) of this title.

(4) an evaluation of the degree of compliance with applicable safety standards, including a list of enforcement actions and compromises of alleged violations by location and company name.

(5) a summary of outstanding problems in carrying out this chapter, in order of priority.

(6) an analysis and evaluation of—

(A) research activities, including their policy implications, completed as a result of the United States Government and private sponsorship; and

(B) technological progress in safety achieved.

(7) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter.

(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.

(9) a compilation of certifications filed under section 60105 of this title that were—

(A) in effect; or

(B) rejected in any part by the Secretary and a summary of the reasons for each rejection.

(10) a compilation of agreements made under section 60106 of this title that were—

(A) in effect; or

(B) ended in any part by the Secretary and a summary of the reasons for ending each agreement.

(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect and the number and qualifications of inspectors the Secretary recommends for that State.

(12) recommendations for legislation the Secretary considers necessary—

(A) to promote cooperation among the States in improving—

(i) gas pipeline safety; or

(ii) hazardous liquid pipeline safety programs; and

(B) to strengthen the national gas pipeline safety program.

(b) SUBMISSION OF ONE REPORT.—The Secretary may submit one report to carry out subsection (a) of this section.

#### **§ 60125. Authorization of appropriations**

(a) GAS.—Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter (except sections 60107 and 60114(b)) related to gas:

(1) \$6,857,000 for the fiscal year ending September 30, 1993.

(2) \$7,000,000 for the fiscal year ending September 30, 1994.

(3) \$7,500,000 for the fiscal year ending September 30, 1995.

(b) HAZARDOUS LIQUID.—Not more than the following amounts may be appropriated to the Secretary to carry out this chapter (except sections 60107 and 60114(b)) related to hazardous liquid:

(1) \$1,728,500 for the fiscal year ending September 30, 1993.

(2) \$1,866,800 for the fiscal year ending September 30, 1994.

(3) \$2,000,000 for the fiscal year ending September 30, 1995.

(c) STATE GRANTS.—(1) Not more than the following amounts may be appropriated to the Secretary to carry out section 60107 of this title:

(A) \$7,750,000 for the fiscal year ending September 30, 1993.

(B) \$9,000,000 for the fiscal year ending September 30, 1994.

(C) \$10,000,000 for the fiscal year ending September 30, 1995.

(2) At least 5 percent of amounts appropriated to carry out United States Government grants-in-aid programs for a fiscal year are available only to carry out section 60107 of this title related to hazardous liquid.

(3) Not more than 20 percent of a pipeline safety program grant under section 60107 of this title may be allocated to indirect expenses.

(d) GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.—Not more than \$\_\_\_\_\_ may be appropriated to the Secretary for the fiscal year ending September 30, 19\_\_, to carry out section 60114(b) of this title. Amounts under this subsection remain available until expended.

(e) CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—  
The Secretary may credit to an appropriation authorized under subsection (a) or (b) of this section amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

(f) AVAILABILITY OF UNUSED AMOUNTS FOR GRANTS.—(1) The Secretary shall make available for grants to States amounts appropriated for each of the fiscal years that ended September 30, 1986, and 1987, that have not been expended in making grants under section 60107 of this title.

(2) A grant under this subsection is available to a State that after December 31, 1987—

(A) undertakes a new responsibility under section 60105 of this title;

or

(B) implements a one-call damage prevention program established under State law.

(3) This subsection does not authorize a State to receive more than 50 percent of its allowable pipeline safety costs from a grant under this chapter.

(4) A State may receive not more than \$75,000 under this subsection.

(5) Amounts under this subsection remain available until expended.

## CHAPTER 603—USER FEES

Sec.

60301. User fees.

### §60301. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe a schedule of fees for all natural gas and hazardous liquids transported by pipelines subject to chapter 601 of this title. The fees shall be based on usage (in reasonable relationship to volume-miles, miles, revenues, or a combination of volume-miles, miles, and revenues) of the pipelines. The Secretary shall consider the allocation of resources of the Department of Transportation when establishing the schedule.

(b) IMPOSITION AND TIME OF COLLECTION.—A fee shall be imposed on each person operating a gas pipeline transmission facility, a liquefied natural gas pipeline facility, or a hazardous liquid pipeline facility to which chapter 601 of this title applies. The fee shall be collected before the end of the fiscal year to which it applies.

(c) MEANS OF COLLECTION.—The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(d) USE OF FEES.—A fee collected under this section—

(1)(A) related to a gas pipeline facility may be used only for an activity related to gas under chapter 601 of this title; and

(B) related to a hazardous liquid pipeline facility may be used only for an activity related to hazardous liquid under chapter 601 of this title; and

(2) may be used only to the extent provided in advance in an appropriation law.

(e) LIMITATIONS.—Fees prescribed under subsection (a) of this section shall be sufficient to pay for the costs of activities described in subsection (d) of this section. However, the total amount collected for a fiscal year may not be more than 105 percent of the total amount of the appropriations made for the fiscal year for activities to be financed by the fees.

## **CHAPTER 605—INTERSTATE COMMERCE REGULATION**

Sec.

60501. Secretary of Energy.

60502. Federal Energy Regulatory Commission.

60503. Effect of enactment.

### **§ 60501. Secretary of Energy**

Except as provided in section 60502 of this title, the Secretary of Energy has the duties and powers related to the transportation of oil by pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or the chairman or a member of the Commission.

### **§ 60502. Federal Energy Regulatory Commission**

The Federal Energy Regulatory Commission has the duties and powers related to the establishment of a rate or charge for the transportation of oil by pipeline or the valuation of that pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or an officer or component of the Interstate Commerce Commission.

### **§ 60503. Effect of enactment**

The enactment of the Act of October 17, 1978 (Public Law 95–473, 92 Stat. 1337), the Act of January 12, 1983 (Public Law 97–449, 96 Stat. 2413), and the Act enacting this section does not repeal, and has no substantive effect on, any right, obligation, liability, or remedy of an oil pipeline, including a right, obligation, liability, or remedy arising under the Interstate Commerce Act or the Act of August 29, 1916 (known as the Pomerene Bills of Lading Act), before any department, agency, or instrumentality of the United States Government, an officer or employee of the Government, or a court of competent jurisdiction.

## **SUBTITLE IX—COMMERCIAL SPACE TRANSPORTATION**

CHAPTER

Sec.

701.	COMMERCIAL SPACE LAUNCH ACTIVITIES .....	70101
703.	SPACE TRANSPORTATION INFRASTRUCTURE MATCHING GRANTS.	70301

## **CHAPTER 701—COMMERCIAL SPACE LAUNCH ACTIVITIES**

Sec.

- 70101. Findings and purposes.
- 70102. Definitions.
- 70103. General authority.
- 70104. Restrictions on launches and operations.
- 70105. License applications and requirements.
- 70106. Monitoring activities.
- 70107. Effective periods, and modifications, suspensions, and revocations, of licenses.
- 70108. Prohibition, suspension, and end of launches and operation of launch sites.
- 70109. Preemption of scheduled launches.
- 70110. Administrative hearings and judicial review.
- 70111. Acquiring United States Government property and services.
- 70112. Liability insurance and financial responsibility requirements.
- 70113. Paying claims exceeding liability insurance and financial responsibility requirements.
- 70114. Disclosing information.
- 70115. Enforcement and penalty.
- 70116. Consultation.
- 70117. Relationship to other executive agencies, laws, and international obligations.
- 70118. User fees.
- 70119. Authorization of appropriations.

### **§ 70101. Findings and purposes**

(a) FINDINGS.—Congress finds that—

(1) the peaceful uses of outer space continue to be of great value and to offer benefits to all mankind;

(2) private applications of space technology have achieved a significant level of commercial and economic activity and offer the potential for growth in the future, particularly in the United States;

(3) new and innovative equipment and services are being sought, produced, and offered by entrepreneurs in telecommunications, information services, and remote sensing technologies;

(4) the private sector in the United States has the capability of developing and providing private satellite launching and associated services that would complement the launching and associated services now available from the United States Government;

(5) the development of commercial launch vehicles and associated services would enable the United States to retain its competitive position internationally, contributing to the national interest and economic well-being of the United States;

(6) providing launch services by the private sector is consistent with the national security and foreign policy interests of the United States and would be facilitated by stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied;

(7) the United States should encourage private sector launches and associated services and, only to the extent necessary, regulate those

launches and services to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States;

(8) space transportation, including the establishment and operation of launch sites and complementary facilities, the providing of launch services, the establishment of support facilities, and the providing of support services, is an important element of the transportation system of the United States, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement; and

(9) the participation of State governments in encouraging and facilitating private sector involvement in space-related activity, particularly through the establishment of a space transportation-related infrastructure, including launch sites, complementary facilities, and launch site support facilities, is in the national interest and is of significant public benefit.

(b) PURPOSES.—The purposes of this chapter are—

(1) to promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;

(2) to encourage the United States private sector to provide launch vehicles and associated services by—

(A) simplifying and expediting the issuance and transfer of commercial launch licenses; and

(B) facilitating and encouraging the use of Government-developed space technology;

(3) to provide that the Secretary of Transportation is to oversee and coordinate the conduct of commercial launch operations, issue and transfer commercial launch licenses authorizing those operations, and protect the public health and safety, safety of property, and national security and foreign policy interests of the United States; and

(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites and launch-site support facilities, with Government, State, and private sector involvement, to support the full range of United States space-related activities.

## **§ 70102. Definitions**

In this chapter—

(1) “citizen of the United States” means—

(A) an individual who is a citizen of the United States;



1 (B) an entity organized or existing under the laws of the United  
2 States or a State; or

3 (C) an entity organized or existing under the laws of a foreign  
4 country if the controlling interest (as defined by the Secretary of  
5 Transportation) is held by an individual or entity described in  
6 subclause (A) or (B) of this clause.

7 (2) “executive agency” has the same meaning given that term in sec-  
8 tion 105 of title 5.

9 (3) “launch” means to place or try to place a launch vehicle and any  
10 payload—

11 (A) in a suborbital trajectory;

12 (B) in Earth orbit in outer space; or

13 (C) otherwise in outer space.

14 (4) “launch property” means an item built for, or used in, the  
15 launch preparation or launch of a launch vehicle.

16 (5) “launch services” means—

17 (A) activities involved in the preparation of a launch vehicle and  
18 payload for launch; and

19 (B) the conduct of a launch.

20 (6) “launch site” means the location on Earth from which a launch  
21 takes place (as defined in a license the Secretary issues or transfers  
22 under this chapter) and necessary facilities.

23 (7) “launch vehicle” means—

24 (A) a vehicle built to operate in, or place a payload in, outer  
25 space; and

26 (B) a suborbital rocket.

27 (8) “payload” means an object that a person undertakes to place in  
28 outer space by means of a launch vehicle, including components of the  
29 vehicle specifically designed or adapted for that object.

30 (9) “person” means an individual and an entity organized or existing  
31 under the laws of a State or country.

32 (10) “State” means a State of the United States, the District of Co-  
33 lumbia, and a territory or possession of the United States.

34 (11) “third party” means a person except—

35 (A) the United States Government or the Government’s contrac-  
36 tors or subcontractors involved in launch services;

37 (B) a licensee or transferee under this chapter;

38 (C) a licensee’s or transferee’s contractors, subcontractors, or  
39 customers involved in launch services; or

40 (D) the customer’s contractors or subcontractors involved in  
41 launch services.

1           (12) “United States” means the States of the United States, the  
2           District of Columbia, and the territories and possessions of the United  
3           States.

4           **§ 70103. General authority**

5           (a) GENERAL.—The Secretary of Transportation shall carry out this  
6           chapter.

7           (b) FACILITATING COMMERCIAL LAUNCHES.—In carrying out this chap-  
8           ter, the Secretary shall—

9               (1) encourage, facilitate, and promote commercial space launches by  
10           the private sector; and

11               (2) take actions to facilitate private sector involvement in commercial  
12           space transportation activity, and to promote public-private partner-  
13           ships involving the United States Government, State governments, and  
14           the private sector to build, expand, modernize, or operate a space  
15           launch infrastructure.

16           (c) EXECUTIVE AGENCY ASSISTANCE.—When necessary, the head of an  
17           executive agency shall assist the Secretary in carrying out this chapter.

18           **§ 70104. Restrictions on launches and operations**

19           (a) LICENSE REQUIREMENT.—A license issued or transferred under this  
20           chapter is required for the following:

21               (1) for a person to launch a launch vehicle or to operate a launch  
22           site in the United States.

23               (2) for a citizen of the United States (as defined in section  
24           70102(1)(A) or (B) of this title) to launch a launch vehicle or to oper-  
25           ate a launch site outside the United States.

26               (3) for a citizen of the United States (as defined in section  
27           70102(1)(C) of this title) to launch a launch vehicle or to operate a  
28           launch site outside the United States and outside the territory of a for-  
29           eign country unless there is an agreement between the United States  
30           Government and the government of the foreign country providing that  
31           the government of the foreign country has jurisdiction over the launch  
32           or operation.

33               (4) for a citizen of the United States (as defined in section  
34           70102(1)(C) of this title) to launch a launch vehicle or to operate a  
35           launch site in the territory of a foreign country if there is an agreement  
36           between the United States Government and the government of the for-  
37           eign country providing that the United States Government has jurisdic-  
38           tion over the launch or operation.

39           (b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a  
40           launch license under this chapter may launch a payload only if the payload

1 complies with all requirements of the laws of the United States related to  
2 launching a payload.

3 (c) PREVENTING LAUNCHES.—The Secretary of Transportation shall es-  
4 tablish whether all required licenses, authorizations, and permits required  
5 for a payload have been obtained. If no license, authorization, or permit is  
6 required, the Secretary may prevent the launch if the Secretary decides the  
7 launch would jeopardize the public health and safety, safety of property, or  
8 national security or foreign policy interest of the United States.

9 **§ 70105. License applications and requirements**

10 (a) APPLICATIONS.—A person may apply to the Secretary of Transpor-  
11 tation for a license or transfer of a license under this chapter in the form  
12 and way the Secretary prescribes. Consistent with the public health and  
13 safety, safety of property, and national security and foreign policy interests  
14 of the United States, the Secretary, not later than 180 days after receiving  
15 an application, shall issue or transfer a license if the Secretary decides in  
16 writing that the applicant complies, and will continue to comply, with this  
17 chapter and regulations prescribed under this chapter. The Secretary shall  
18 inform the applicant of any pending issue and action required to resolve the  
19 issue if the Secretary has not made a decision not later than 120 days after  
20 receiving an application.

21 (b) REQUIREMENTS.—(1) Except as provided in this subsection, all re-  
22 quirements of the laws of the United States applicable to the launch of a  
23 launch vehicle or the operation of a launch site are requirements for a li-  
24 cense under this chapter.

25 (2) The Secretary may prescribe—

26 (A) any term necessary to ensure compliance with this chapter, in-  
27 cluding on-site verification that a launch or operation complies with  
28 representations stated in the application;

29 (B) an additional requirement necessary to protect the public health  
30 and safety, safety of property, national security interests, and foreign  
31 policy interests of the United States; and

32 (C) by regulation that a requirement of a law of the United States  
33 not be a requirement for a license if the Secretary, after consulting  
34 with the head of the appropriate executive agency, decides that the re-  
35 quirement is not necessary to protect the public health and safety, safe-  
36 ty of property, and national security and foreign policy interests of the  
37 United States.

38 (3) The Secretary may waive a requirement for an individual applicant  
39 if the Secretary decides that the waiver is in the public interest and will  
40 not jeopardize the public health and safety, safety of property, and national  
41 security and foreign policy interests of the United States.

(c) PROCEDURES AND TIMETABLES.—The Secretary shall establish procedures and timetables that expedite review of a license application and reduce the regulatory burden for an applicant.

**§ 70106. Monitoring activities**

(a) GENERAL REQUIREMENTS.—A licensee under this chapter must allow the Secretary of Transportation to place an officer or employee of the United States Government or another individual as an observer at a launch site the licensee uses, at a production facility or assembly site a contractor of the licensee uses to produce or assemble a launch vehicle, or at a site at which a payload is integrated with a launch vehicle. The observer will monitor the activity of the licensee or contractor at the time and to the extent the Secretary considers reasonable to ensure compliance with the license or to carry out the duties of the Secretary under section 70104(c) of this title. A licensee must cooperate with an observer carrying out this subsection.

(b) CONTRACTS.—To the extent provided in advance in an appropriation law, the Secretary may make a contract with a person to carry out subsection (a) of this section.

**§ 70107. Effective periods, and modifications, suspensions, and revocations, of licenses**

(a) EFFECTIVE PERIODS OF LICENSES.—The Secretary of Transportation shall specify the period for which a license issued or transferred under this chapter is in effect.

(b) MODIFICATIONS.—On the initiative of the Secretary or on application of the licensee, the Secretary may modify a license issued or transferred under this chapter if the Secretary decides the modification will comply with this chapter.

(c) SUSPENSIONS AND REVOCATIONS.—The Secretary may suspend or revoke a license if the Secretary decides that—

(1) the licensee has not complied substantially with a requirement of this chapter or a regulation prescribed under this chapter; or

(2) the suspension or revocation is necessary to protect the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(d) EFFECTIVE PERIODS OF MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS.—Unless the Secretary specifies otherwise, a modification, suspension, or revocation under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

(e) NOTIFICATION.—The Secretary shall notify the licensee in writing of the decision of the Secretary under this section and any action the Secretary takes or proposes to take based on the decision.

**§ 70108. Prohibition, suspension, and end of launches and operation of launch sites**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may prohibit, suspend, or end immediately the launch of a launch vehicle or the operation of a launch site licensed under this chapter if the Secretary decides the launch or operation is detrimental to the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(b) EFFECTIVE PERIODS OF ORDERS.—An order under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

**§ 70109. Preemption of scheduled launches**

(a) GENERAL.—With the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation shall act to ensure that a launch of a payload is not preempted from access to a United States Government launch site or launch property, except for imperative national need, when a launch date commitment from the Government has been obtained for a launch licensed under this chapter. A licensee or transferee preempted from access to a launch site or launch property does not have to pay the Government any amount for launch services attributable only to the scheduled launch prevented by the preemption.

(b) IMPERATIVE NATIONAL NEED DECISIONS.—In consultation with the Secretary of Transportation, the Secretary of Defense or the Administrator shall decide when an imperative national need requires preemption under subsection (a) of this section. That decision may not be delegated.

(c) REPORTS.—In cooperation with the Secretary of Transportation, the Secretary of Defense or the Administrator, as appropriate, shall submit to Congress not later than 7 days after a decision to preempt under subsection (a) of this section, a report that includes an explanation of the circumstances justifying the decision and a schedule for ensuring the prompt launching of a preempted payload.

**§ 70110. Administrative hearings and judicial review**

(a) ADMINISTRATIVE HEARINGS.—The Secretary of Transportation shall provide an opportunity for a hearing on the record to—

(1) an applicant under this chapter, for a decision of the Secretary under section 70105(a) of this title to issue or transfer a license with terms or deny the issuance or transfer of a license;

(2) an owner or operator of a payload under this chapter, for a decision of the Secretary under section 70104(c) of this title to prevent the launch of the payload; and

1 (3) a licensee under this chapter, for a decision of the Secretary  
2 under—

3 (A) section 70107(b) or (c) of this title to modify, suspend, or  
4 revoke a license; or

5 (B) section 70108(a) of this title to prohibit, suspend, or end  
6 a launch or operation of a launch site licensed by the Secretary.

7 (b) JUDICIAL REVIEW.—A final action of the Secretary under this chap-  
8 ter is subject to judicial review as provided in chapter 7 of title 5.

9 **§ 70111. Acquiring United States Government property and**  
10 **services**

11 (a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—(1) The Secretary  
12 of Transportation shall facilitate and encourage the acquisition by the pri-  
13 vate sector and State governments of—

14 (A) launch property of the United States Government that is excess  
15 or otherwise is not needed for public use; and

16 (B) launch services, including utilities, of the Government otherwise  
17 not needed for public use.

18 (2) In acting under paragraph (1) of this subsection, the Secretary shall  
19 consider the commercial availability on reasonable terms of substantially  
20 equivalent launch property or launch services from a domestic source.

21 (b) PRICE.—(1) In this subsection, “direct costs” means the actual costs  
22 that—

23 (A) can be associated unambiguously with a commercial launch ef-  
24 fort; and

25 (B) the Government would not incur if there were no commercial  
26 launch effort.

27 (2) In consultation with the Secretary, the head of the executive agency  
28 providing the property or service under subsection (a) of this section shall  
29 establish the price for the property or service. The price for—

30 (A) acquiring launch property by sale or transaction instead of sale  
31 is the fair market value;

32 (B) acquiring launch property (except by sale or transaction instead  
33 of sale) is an amount equal to the direct costs, including specific wear  
34 and tear and property damage, the Government incurred because of ac-  
35 quisition of the property; and

36 (C) launch services is an amount equal to the direct costs, including  
37 the basic pay of Government civilian and contractor personnel, the Gov-  
38 ernment incurred because of acquisition of the services.

39 (c) COLLECTION BY SECRETARY.—The Secretary may collect a payment  
40 under this section with the consent of the head of the executive agency es-  
41 tablishing the price. Amounts collected under this subsection shall be depos-

ited in the Treasury. Amounts (except for excess launch property) shall be credited to the appropriation from which the cost of providing the property or services was paid.

(d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a department, agency, or instrumentality of the Government may collect a payment for an activity involved in producing a launch vehicle or its payload for launch if the activity was agreed to by the owner or manufacturer of the launch vehicle or payload.

**§ 70112. Liability insurance and financial responsibility requirements**

(a) GENERAL REQUIREMENTS.—(1) When a license is issued or transferred under this chapter, the licensee or transferee shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(A) a third party for death, bodily injury, or property damage or loss resulting from an activity carried out under the license; and

(B) the United States Government against a person for damage or loss to Government property resulting from an activity carried out under the license.

(2) The Secretary of Transportation shall determine the amounts required under paragraph (1)(A) and (B) of this subsection, after consulting with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate executive agencies.

(3) For the total claims related to one launch, a licensee or transferee is not required to obtain insurance or demonstrate financial responsibility of more than—

(A)(i) \$500,000,000 under paragraph (1)(A) of this subsection; or

(ii) \$100,000,000 under paragraph (1)(B) of this subsection; or

(B) the maximum liability insurance available on the world market at reasonable cost if the amount is less than the applicable amount in clause (A) of this paragraph.

(4) An insurance policy or demonstration of financial responsibility under this subsection shall protect the following, to the extent of their potential liability for involvement in launch services, at no cost to the Government:

(A) the Government.

(B) executive agencies and personnel, contractors, and subcontractors of the Government.

(C) contractors, subcontractors, and customers of the licensee or transferee.

(D) contractors and subcontractors of the customer.

1 (b) RECIPROCAL WAIVER OF CLAIMS.—(1) A license issued or transferred  
2 under this chapter shall contain a provision requiring the licensee or trans-  
3 feree to make a reciprocal waiver of claims with its contractors, subcontract-  
4 tors, and customers, and contractors and subcontractors of the customers,  
5 involved in launch services under which each party to the waiver agrees to  
6 be responsible for property damage or loss it sustains, or for personal injury  
7 to, death of, or property damage or loss sustained by its own employees re-  
8 sulting from an activity carried out under the license.

9 (2) The Secretary of Transportation shall make, for the Government, ex-  
10 ecutive agencies of the Government involved in launch services, and contrac-  
11 tors and subcontractors involved in launch services, a reciprocal waiver of  
12 claims with the licensee or transferee, contractors, subcontractors, and cus-  
13 tomers of the licensee or transferee, and contractors and subcontractors of  
14 the customers, involved in launch services under which each party to the  
15 waiver agrees to be responsible for property damage or loss it sustains, or  
16 for personal injury to, death of, or property damage or loss sustained by  
17 its own employees resulting from an activity carried out under the license.  
18 The waiver applies only to the extent that claims are more than the amount  
19 of insurance or demonstration of financial responsibility required under sub-  
20 section (a)(1)(B) of this section. After consulting with the Administrator  
21 and the Secretary of the Air Force, the Secretary of Transportation may  
22 waive, for the Government and a department, agency, and instrumentality  
23 of the Government, the right to recover damages for damage or loss to Gov-  
24 ernment property to the extent insurance is not available because of a policy  
25 exclusion the Secretary of Transportation decides is usual for the type of  
26 insurance involved.

27 (c) DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The Secretary  
28 of Transportation shall determine the maximum probable losses under sub-  
29 section (a)(1)(A) and (B) of this section associated with an activity under  
30 a license not later than 90 days after a licensee or transferee requires a  
31 determination and submits all information the Secretary requires. The Sec-  
32 retary shall amend the determination as warranted by new information.

33 (d) ANNUAL REPORT.—(1) Not later than November 15 of each year, the  
34 Secretary of Transportation shall submit to the Committee on Commerce,  
35 Science, and Transportation of the Senate and the Committee on Science,  
36 Space, and Technology of the House of Representatives a report on current  
37 determinations made under subsection (c) of this section related to all is-  
38 sued licenses and the reasons for the determinations.

39 (2) Not later than May 15 of each year, the Secretary of Transportation  
40 shall review the amounts specified in subsection (a)(3)(A) of this section  
41 and submit a report to Congress that contains proposed adjustments in the



amounts to conform with changed liability expectations and availability of insurance on the world market. The proposed adjustment takes effect 30 days after a report is submitted.

(e) LAUNCHES INVOLVING GOVERNMENT FACILITIES AND PERSONNEL.—The Secretary of Transportation shall establish requirements consistent with this chapter for proof of financial responsibility and other assurances necessary to protect the Government and its executive agencies and personnel from liability, death, bodily injury, or property damage or loss as a result of a launch or operation of a launch site involving a facility or personnel of the Government. The Secretary may not relieve the Government of liability under this subsection for death, bodily injury, or property damage or loss resulting from the willful misconduct of the Government or its agents.

(f) COLLECTION AND CREDITING PAYMENTS.—The head of a department, agency, or instrumentality of the Government shall collect a payment owed for damage or loss to Government property under its jurisdiction or control resulting from an activity carried out under a license issued or transferred under this chapter. The payment shall be credited to the current applicable appropriation, fund, or account of the department, agency, or instrumentality.

**§70113. Paying claims exceeding liability insurance and financial responsibility requirements**

(a) GENERAL REQUIREMENTS.—(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch—

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than \$1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

(b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the Secretary must approve any part of a settlement to be paid out of appropriations of the Government.

(c) WITHHOLDING PAYMENTS.—The Secretary may withhold a payment under subsection (a) of this section if the Secretary certifies that the amount is not reasonable. However, the Secretary shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch is likely to be more than the amount of required insurance or demonstration of financial responsibility, the Secretary shall—

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch may be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the Secretary, shall submit to Congress a compensation plan that—

(A) outlines the total dollar value of the claims;

(B) recommends sources of amounts to pay for the claims;

(C) includes legislative language required to carry out the plan if additional legislative authority is required; and

1 (D) for a single event or incident, may not be for more than  
2 \$1,500,000,000.

3 (3) A compensation plan submitted to Congress under paragraph (2) of  
4 this subsection shall—

5 (A) have an identification number; and

6 (B) be submitted to the Senate and the House of Representatives  
7 on the same day and when the Senate and House are in session.

8 (e) CONGRESSIONAL RESOLUTIONS.—(1) In this subsection, “resolu-  
9 tion”—

10 (A) means a joint resolution of Congress the matter after the resolv-  
11 ing clause of which is as follows: “That the Congress approves the com-  
12 pensation plan numbered \_\_\_\_\_ submitted to the Congress on  
13 \_\_\_\_\_, 19\_\_\_\_.”, with the blank spaces being filled appro-  
14 priately; but

15 (B) does not include a resolution that includes more than one com-  
16 pensation plan.

17 (2) The Senate shall consider under this subsection a compensation plan  
18 requiring additional appropriations or legislative authority not later than 60  
19 calendar days of continuous session of Congress after the date on which the  
20 plan is submitted to Congress.

21 (3) A resolution introduced in the Senate shall be referred immediately  
22 to a committee by the President of the Senate. All resolutions related to  
23 the same plan shall be referred to the same committee.

24 (4)(A) If the committee of the Senate to which a resolution has been re-  
25 ferred does not report the resolution within 20 calendar days after it is re-  
26 ferred, a motion is in order to discharge the committee from further consid-  
27 eration of the resolution or to discharge the committee from further consid-  
28 eration of the plan.

29 (B) A motion to discharge may be made only by an individual favoring  
30 the resolution and is highly privileged (except that the motion may not be  
31 made after the committee has reported a resolution on the plan). Debate  
32 on the motion is limited to one hour, to be divided equally between those  
33 favoring and those opposing the resolution. An amendment to the motion  
34 is not in order. A motion to reconsider the vote by which the motion is  
35 agreed to or disagreed to is not in order.

36 (C) If the motion to discharge is agreed to or disagreed to, the motion  
37 may not be renewed and another motion to discharge the committee from  
38 another resolution on the same plan may not be made.

39 (5)(A) After a committee of the Senate reports, or is discharged from fur-  
40 ther consideration of, a resolution, a motion to proceed to the consideration  
41 of the resolution is in order at any time, even though a similar previous mo-

tion has been disagreed to. The motion is highly privileged and is not debatable. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph is limited to not more than 10 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(6) The following shall be decided in the Senate without debate:

(A) a motion to postpone related to the discharge from committee.

(B) a motion to postpone consideration of a resolution.

(C) a motion to proceed to the consideration of other business.

(D) an appeal from a decision of the chair related to the application of the rules of the Senate to the procedures related to resolution.

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the Secretary receives a complete and valid application not later than December 31, 1999.

#### **§ 70114. Disclosing information**

The Secretary of Transportation, an officer or employee of the United States Government, or a person making a contract with the Secretary under section 70106(b) of this title may disclose information under this chapter that qualifies for an exemption under section 552(b)(4) of title 5 or is designated as confidential by the person or head of the executive agency providing the information only if the Secretary decides withholding the information is contrary to the public or national interest.

#### **§ 70115. Enforcement and penalty**

(a) PROHIBITIONS.—A person may not violate this chapter, a regulation prescribed under this chapter, or any term of a license issued or transferred under this chapter.

(b) GENERAL AUTHORITY.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) conduct investigations and inquiries;

(B) administer oaths;

(C) take affidavits; and

(D) under lawful process—

(i) enter at a reasonable time a launch site, production facility, assembly site of a launch vehicle, or site at which a payload is integrated with a launch vehicle to inspect an object to which this chapter applies or a record or report the Secretary requires be made or kept under this chapter; and

1 (ii) seize the object, record, or report when there is probable  
 2 cause to believe the object, record, or report was used, is being  
 3 used, or likely will be used in violation of this chapter.

4 (2) The Secretary may delegate a duty or power under this chapter relat-  
 5 ed to enforcement to an officer or employee of another executive agency with  
 6 the consent of the head of the agency.

7 (c) CIVIL PENALTY.—(1) After notice and an opportunity for a hearing  
 8 on the record, a person the Secretary finds to have violated subsection (a)  
 9 of this section is liable to the United States Government for a civil penalty  
 10 of not more than \$100,000. A separate violation occurs for each day the  
 11 violation continues.

12 (2) In conducting a hearing under paragraph (1) of this subsection, the  
 13 Secretary may—

14 (A) subpoena witnesses and records; and

15 (B) enforce a subpoena in an appropriate district court of the United  
 16 States.

17 (3) The Secretary shall impose the civil penalty by written notice. The  
 18 Secretary may compromise or remit a penalty imposed, or that may be im-  
 19 posed, under this section.

20 (4) The Secretary shall recover a civil penalty not paid after the penalty  
 21 is final or after a court enters a final judgment for the Secretary.

## 22 **§ 70116. Consultation**

23 (a) MATTERS AFFECTING NATIONAL SECURITY.—The Secretary of  
 24 Transportation shall consult with the Secretary of Defense on a matter  
 25 under this chapter affecting national security. The Secretary of Defense  
 26 shall identify and notify the Secretary of Transportation of a national secu-  
 27 rity interest relevant to an activity under this chapter.

28 (b) MATTERS AFFECTING FOREIGN POLICY.—The Secretary of Trans-  
 29 portation shall consult with the Secretary of State on a matter under this  
 30 chapter affecting foreign policy. The Secretary of State shall identify and  
 31 notify the Secretary of Transportation of a foreign policy interest or obliga-  
 32 tion relevant to an activity under this chapter.

33 (c) OTHER MATTERS.—In carrying out this chapter, the Secretary of  
 34 Transportation shall consult with the head of another executive agency—

35 (1) to provide consistent application of licensing requirements under  
 36 this chapter;

37 (2) to ensure fair treatment for all license applicants; and

38 (3) when appropriate.

**§ 70117. Relationship to other executive agencies, laws, and international obligations**

(a) EXECUTIVE AGENCIES.—Except as provided in this chapter, a person is not required to obtain from an executive agency a license, approval, waiver, or exemption to launch a launch vehicle or operate a launch site.

(b) FEDERAL COMMUNICATIONS COMMISSION AND SECRETARY OF COMMERCE.—This chapter does not affect the authority of—

(1) the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(2) the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.).

(c) STATES AND POLITICAL SUBDIVISIONS.—A State or political subdivision of a State—

(1) may not adopt or have in effect a law, regulation, standard, or order inconsistent with this chapter; but

(2) may adopt or have in effect a law, regulation, standard, or order consistent with this chapter that is in addition to or more stringent than a requirement of, or regulation prescribed under, this chapter.

(d) CONSULTATION.—The Secretary of Transportation is encouraged to consult with a State to simplify and expedite the approval of a space launch activity.

(e) FOREIGN COUNTRIES.—The Secretary of Transportation shall—

(1) carry out this chapter consistent with an obligation the United States Government assumes in a treaty, convention, or agreement in force between the Government and the government of a foreign country; and

(2) consider applicable laws and requirements of a foreign country when carrying out this chapter.

(f) LAUNCH NOT AN EXPORT.—A launch vehicle or payload that is launched is not, because of the launch, an export for purposes of a law controlling exports.

(g) NONAPPLICATION.—This chapter does not apply to—

(1) a launch, operation of a launch vehicle or launch site, or other space activity the Government carries out for the Government; or

(2) planning or policies related to the launch, operation, or activity.

**§ 70118. User fees**

The Secretary of Transportation may collect a user fee for a regulatory or other service conducted under this chapter only if specifically authorized by this chapter.

**§ 70119. Authorization of appropriations**

The following amounts may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1993:

(1) \$4,900,000 to carry out this chapter.

(2) \$20,000,000 for a program to ensure the resiliency of the space launch infrastructure of the United States if a law is enacted to establish that program in the Department of Transportation.

**CHAPTER 703—SPACE TRANSPORTATION  
INFRASTRUCTURE MATCHING GRANTS**

Sec.

70301. Definitions.

70302. Grant authority.

70303. Grant applications.

70304. Environmental requirements.

70305. Authorization of appropriations.

**§ 70301. Definitions**

In this chapter—

(1) the definitions in section 502 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5802) apply.

(2) “commercial space transportation infrastructure development” includes—

(A) construction, improvement, design, and engineering of space transportation infrastructure in the United States; and

(B) technical studies to define how new or enhanced space transportation infrastructure can best meet the needs of the United States commercial space transportation industry.

(3) “project” means a project (or separate projects submitted together) to carry out commercial space transportation infrastructure development, including the combined submission of all projects to be undertaken at a particular site in a fiscal year.

(4) “project grant” means a grant of an amount by the Secretary of Transportation to a sponsor for one or more projects.

(5) “public agency” means a State or an agency of a State, a political subdivision of a State, or a tax-supported organization.

(6) “sponsor” means a public agency that, individually or jointly with one or more other public agencies, submits to the Secretary under this chapter an application for a project grant.

**§ 70302. Grant authority**

(a) GENERAL AUTHORITY.—To ensure the resiliency of the space transportation infrastructure of the United States, the Secretary of Transportation may make project grants to sponsors as provided in this chapter.

(b) LIMITATIONS.—The Secretary may make a project grant under this chapter only if—

(1) at least 10 percent of the total cost of the project will be paid by the private sector; and

(2) the grant will not be for more than 50 percent of the total cost of the project.

### **§ 70303. Grant applications**

(a) GENERAL.—A sponsor may submit to the Secretary of Transportation an application for a project grant. The application must state the project to be undertaken and be in the form and contain the information the Secretary requires.

(b) CONSIDERATIONS AND CONSULTATION.—(1) In selecting proposed projects for grants under this section, the Secretary of Transportation shall consider—

(A) the contribution of the project to industry capabilities that serve the United States Government's space transportation needs;

(B) the extent of industry's financial contribution to the project;

(C) the extent of industry's participation in the project;

(D) the positive impact of the project on the international competitiveness of the United States space transportation industry;

(E) the extent of State contributions to the project; and

(F) the impact of the project on launch operations and other activities at Government launch ranges.

(2) The Secretary of Transportation shall consult with the Secretary of Defense, the Administrator of the National Space and Aeronautics Administration, and the heads of other appropriate agencies of the Government about paragraph (1)(A) and (F) of this subsection.

(c) REQUIREMENTS.—The Secretary of Transportation may approve an application only if the Secretary is satisfied that—

(1) the project will contribute to the purposes of this chapter;

(2) the project is reasonably consistent with plans (existing at the time of approval of the project) of public agencies that are—

(A) authorized by the State in which the project is located; and

(B) responsible for the development of the area surrounding the project site;

(3) if the application proposes to use Government property, the specific consent of the head of the appropriate agency has been obtained;

(4) the project will be completed without unreasonable delay;

(5) the sponsor submitting the application has the legal authority to engage in the project; and



1           (6) any additional requirements prescribed by the Secretary have  
2           been met.

3           (d) PREFERENCE FOR INDUSTRY CONTRIBUTIONS.—The Secretary of  
4           Transportation shall give preference to applications for projects for which  
5           there will be greater industry financial contributions, all other factors being  
6           equal.

7           **§ 70304. Environmental requirements**

8           (a) POLICY.—It is the policy of the United States that projects selected  
9           under this chapter shall provide for the protection and enhancement of the  
10          natural resources and the quality of the environment of the United States.  
11          In carrying out this policy, the Secretary of Transportation shall consult  
12          with the Secretary of the Interior and the Administrator of the Environ-  
13          mental Protection Agency about a project that may have a significant effect  
14          on natural resources, including fish and wildlife, natural, scenic, and rec-  
15          reational assets, water and air quality, and other factors affecting the envi-  
16          ronment. If the Secretary of Transportation finds that a project will have  
17          a significant adverse effect, the Secretary may approve the application for  
18          the project only if, after a complete review that is a matter of public record,  
19          the Secretary makes a written finding that no feasible and prudent alter-  
20          native to the project exists and that all reasonable steps have been taken  
21          to minimize the adverse effect.

22          (b) PUBLIC HEARING REQUIREMENT.—The Secretary of Transportation  
23          may approve an application only if the sponsor of the project certifies to  
24          the Secretary that an opportunity for a public hearing has been provided  
25          to consider the economic, social, and environmental effects of the project  
26          and its consistency with the goals of any planning carried out by the com-  
27          munity. When a hearing is held under this paragraph, the sponsor shall sub-  
28          mit a copy of the transcript of the hearing to the Secretary.

29          (c) COMPLIANCE WITH AIR AND WATER QUALITY STANDARDS.—(1) The  
30          Secretary of Transportation may approve an application only if the chief ex-  
31          ecutive officer of the State in which the project is located certifies in writing  
32          to the Secretary that there is reasonable assurance that the project will be  
33          located, designed, constructed, and operated to comply with applicable air  
34          and water quality standards. If the Administrator has not prescribed those  
35          standards, certification shall be obtained from the Administrator. Notice of  
36          certification or refusal to certify shall be provided not later than 60 days  
37          after the Secretary receives the application.

38          (2) The Secretary of Transportation shall condition the approval of an  
39          application on compliance with applicable air and water quality standards  
40          during construction and operation.

(d) COMPLIANCE WITH LAWS AND REGULATIONS.—The Secretary of Transportation may require a certification from a sponsor that the sponsor will comply with all applicable laws and regulations. The Secretary may rescind at any time acceptance of a certification from a sponsor under this subsection. This subsection does not affect any responsibility of the Secretary under another law, including—

(1) section 303 of this title;

(2) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(3) title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.);

(4) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(5) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

#### **§ 70305. Authorization of appropriations**

Not more than \$10,000,000 may be appropriated to the Secretary of Transportation to make grants under this chapter. Amounts appropriated under this section remain available until expended.

### **SUBTITLE X—MISCELLANEOUS**

CHAPTER	Sec.
801. BILLS OF LADING .....	80101
803. CONTRABAND .....	80301
805. MISCELLANEOUS .....	80501

#### **CHAPTER 801—BILLS OF LADING**

Sec.
80101. Definitions.
80102. Application.
80103. Negotiable and nonnegotiable bills.
80104. Form and requirements for negotiation.
80105. Title and rights affected by negotiation.
80106. Transfer without negotiation.
80107. Warranties and liability.
80108. Alterations and additions.
80109. Liens of common carriers.
80110. Duty to deliver goods.
80111. Liability for delivery of goods.
80112. Liability under negotiable bills issued in parts, sets, or duplicates.
80113. Liability for nonreceipt, misdescription, and improper loading.
80114. Lost, stolen, and destroyed negotiable bills.
80115. Limitation on use of judicial process to obtain possession of goods from common carriers.
80116. Criminal penalty.

#### **§ 80101. Definitions**

In this chapter—

(1) “consignee” means the person named in a bill of lading as the person to whom the goods are to be delivered.

(2) “consignor” means the person named in a bill of lading as the person from whom the goods have been received for shipment.

(3) “goods” means merchandise or personal property that has been, is being, or will be transported.

(4) “holder” means a person having possession of, and a property right in, a bill of lading.

(5) “order” means an order by indorsement on a bill of lading.

(6) “purchase” includes taking by mortgage or pledge.

(7) “State” means a State of the United States, the District of Columbia, and a territory or possession of the United States.

#### **§ 80102. Application**

This chapter applies to a bill of lading when the bill is issued by a common carrier for the transportation of goods—

(1) between a place in the District of Columbia and another place in the District of Columbia;

(2) between a place in a territory or possession of the United States and another place in the same territory or possession;

(3) between a place in a State and a place in another State;

(4) between a place in a State and a place in the same State through another State or a foreign country; or

(5) from a place in a State to a place in a foreign country.

#### **§ 80103. Negotiable and nonnegotiable bills**

(a) NEGOTIABLE BILLS.—(1) A bill of lading is negotiable if the bill—

(A) states that the goods are to be delivered to the order of a consignee; and

(B) does not contain on its face an agreement with the shipper that the bill is not negotiable.

(2) Inserting in a negotiable bill of lading the name of a person to be notified of the arrival of the goods—

(A) does not limit its negotiability; and

(B) is not notice to the purchaser of the goods of a right the named person has to the goods.

(b) NONNEGOTIABLE BILLS.—(1) A bill of lading is nonnegotiable if the bill states that the goods are to be delivered to a consignee. The indorsement of a nonnegotiable bill does not—

(A) make the bill negotiable; or

(B) give the transferee any additional right.

(2) A common carrier issuing a nonnegotiable bill of lading must put “nonnegotiable” or “not negotiable” on the bill. This paragraph does not apply to an informal memorandum or acknowledgment.

#### **§ 80104. Form and requirements for negotiation**

(a) GENERAL RULES.—(1) A negotiable bill of lading may be negotiated by indorsement. An indorsement may be made in blank or to a specified

1 person. If the goods are deliverable to the order of a specified person, then  
 2 the bill must be indorsed by that person.

3 (2) A negotiable bill of lading may be negotiated by delivery when the  
 4 common carrier, under the terms of the bill, undertakes to deliver the goods  
 5 to the order of a specified person and that person or a subsequent indorsee  
 6 has indorsed the bill in blank.

7 (3) A negotiable bill of lading may be negotiated by a person possessing  
 8 the bill, regardless of the way in which the person got possession, if—

9 (A) a common carrier, under the terms of the bill, undertakes to de-  
 10 liver the goods to that person; or

11 (B) when the bill is negotiated, it is in a form that allows it to be  
 12 negotiated by delivery.

13 (b) VALIDITY NOT AFFECTED.—The validity of a negotiation of a bill of  
 14 lading is not affected by the negotiation having been a breach of duty by  
 15 the person making the negotiation, or by the owner of the bill having been  
 16 deprived of possession by fraud, accident, mistake, duress, loss, theft, or  
 17 conversion, if the person to whom the bill is negotiated, or the person to  
 18 whom the bill is subsequently negotiated, gives value for the bill in good  
 19 faith and without notice of the breach of duty, fraud, accident, mistake, du-  
 20 ress, loss, theft, or conversion.

21 (c) NEGOTIATION BY SELLER, MORTGAGOR, OR PLEDGOR TO PERSON  
 22 WITHOUT NOTICE.—When goods for which a negotiable bill of lading has  
 23 been issued are in a common carrier's possession, and the person to whom  
 24 the bill has been issued retains possession of the bill after selling, mortgag-  
 25 ing, or pledging the goods or bill, the subsequent negotiation of the bill by  
 26 that person to another person receiving the bill for value, in good faith, and  
 27 without notice of the prior sale, mortgage, or pledge has the same effect  
 28 as if the first purchaser of the goods or bill had expressly authorized the  
 29 subsequent negotiation.

### 30 **§ 80105. Title and rights affected by negotiation**

31 (a) TITLE.—When a negotiable bill of lading is negotiated—

32 (1) the person to whom it is negotiated acquires the title to the  
 33 goods that—

34 (A) the person negotiating the bill had the ability to convey to  
 35 a purchaser in good faith for value; and

36 (B) the consignor and consignee had the ability to convey to  
 37 such a purchaser; and

38 (2) the common carrier issuing the bill becomes obligated directly to  
 39 the person to whom the bill is negotiated to hold possession of the  
 40 goods under the terms of the bill the same as if the carrier had issued  
 41 the bill to that person.

(b) SUPERIORITY OF RIGHTS.—When a negotiable bill of lading is negotiated to a person for value in good faith, that person's right to the goods for which the bill was issued is superior to a seller's lien or to a right to stop the transportation of the goods. This subsection applies whether the negotiation is made before or after the common carrier issuing the bill receives notice of the seller's claim. The carrier may deliver the goods to an unpaid seller only if the bill first is surrendered for cancellation.

(c) MORTGAGEE AND LIEN HOLDER RIGHTS NOT AFFECTED.—Except as provided in subsection (b) of this section, this chapter does not limit a right of a mortgagee or lien holder having a mortgage or lien on goods against a person that purchased for value in good faith from the owner, and got possession of the goods immediately before delivery to the common carrier.

#### **§ 80106. Transfer without negotiation**

(a) DELIVERY AND AGREEMENT.—The holder of a bill of lading may transfer the bill without negotiating it by delivery and agreement to transfer title to the bill or to the goods represented by it. Subject to the agreement, the person to whom the bill is transferred has title to the goods against the transferor.

(b) COMPELLING INDORSEMENT.—When a negotiable bill of lading is transferred for value by delivery without being negotiated and indorsement of the transferor is essential for negotiation, the transferee may compel the transferor to indorse the bill unless a contrary intention appears. The negotiation is effective when the indorsement is made.

(c) EFFECT OF NOTIFICATION.—(1) When a transferee notifies the common carrier that a nonnegotiable bill of lading has been transferred under subsection (a) of this section, the carrier is obligated directly to the transferee for any obligations the carrier owed to the transferor immediately before the notification. However, before the carrier is notified, the transferee's title to the goods and right to acquire the obligations of the carrier may be defeated by—

(A) garnishment, attachment, or execution on the goods by a creditor of the transferor; or

(B) notice to the carrier by the transferor or a purchaser from the transferor of a later purchase of the goods from the transferor.

(2) A common carrier has been notified under this subsection only if—

(A) an officer or agent of the carrier, whose actual or apparent authority includes acting on the notification, has been notified; and

(B) the officer or agent has had time, exercising reasonable diligence, to communicate with the agent having possession or control of the goods.

**§ 80107. Warranties and liability**

(a) GENERAL RULE.—Unless a contrary intention appears, a person negotiating or transferring a bill of lading for value warrants that—

(1) the bill is genuine;

(2) the person has the right to transfer the bill and the title to the goods described in the bill;

(3) the person does not know of a fact that would affect the validity or worth of the bill; and

(4) the goods are merchantable or fit for a particular purpose when merchantability or fitness would have been implied if the agreement of the parties had been to transfer the goods without a bill of lading.

(b) SECURITY FOR DEBT.—A person holding a bill of lading as security for a debt and in good faith demanding or receiving payment of the debt from another person does not warrant by the demand or receipt—

(1) the genuineness of the bill; or

(2) the quantity or quality of the goods described in the bill.

(c) DUPLICATES.—A common carrier issuing a bill of lading, on the face of which is the word “duplicate” or another word indicating that the bill is not an original bill, is liable the same as a person that represents and warrants that the bill is an accurate copy of an original bill properly issued. The carrier is not otherwise liable under the bill.

(d) INDORSER LIABILITY.—Indorsement of a bill of lading does not make the indorser liable for failure of the common carrier or a previous indorser to fulfill its obligations.

**§ 80108. Alterations and additions**

An alteration or addition to a bill of lading after its issuance by a common carrier, without authorization from the carrier in writing or noted on the bill, is void. However, the original terms of the bill are enforceable.

**§ 80109. Liens of common carriers**

A common carrier issuing a negotiable bill of lading has a lien on the goods covered by the bill for—

(1) charges for storage, transportation, and delivery (including demurrage and terminal charges), and expenses necessary to preserve the goods or incidental to transporting the goods after the date of the bill; and

(2) other charges for which the bill expressly specifies a lien is claimed to the extent the charges are allowed by law and the agreement between the consignor and carrier.

**§ 80110. Duty to deliver goods**

(a) GENERAL RULES.—Except to the extent a common carrier establishes an excuse provided by law, the carrier must deliver goods covered by a bill

1 of lading on demand of the consignee named in a nonnegotiable bill or the  
 2 holder of a negotiable bill for the goods when the consignee or holder—

3 (1) offers in good faith to satisfy the lien of the carrier on the goods;

4 (2) has possession of the bill and, if a negotiable bill, offers to in-  
 5 dorse and give the bill to the carrier; and

6 (3) agrees to sign, on delivery of the goods, a receipt for delivery if  
 7 requested by the carrier.

8 (b) PERSONS TO WHOM GOODS MAY BE DELIVERED.—Subject to section  
 9 80111 of this title, a common carrier may deliver the goods covered by a  
 10 bill of lading to—

11 (1) a person entitled to their possession;

12 (2) the consignee named in a nonnegotiable bill; or

13 (3) a person in possession of a negotiable bill if—

14 (A) the goods are deliverable to the order of that person; or

15 (B) the bill has been indorsed to that person or in blank by the  
 16 consignee or another indorsee.

17 (c) COMMON CARRIER CLAIMS OF TITLE AND POSSESSION.—A claim by  
 18 a common carrier that the carrier has title to goods or right to their posses-  
 19 sion is an excuse for nondelivery of the goods only if the title or right is  
 20 derived from—

21 (1) a transfer made by the consignor or consignee after the ship-  
 22 ment; or

23 (2) the carrier's lien.

24 (d) ADVERSE CLAIMS.—If a person other than the consignee or the per-  
 25 son in possession of a bill of lading claims title to or possession of goods  
 26 and the common carrier knows of the claim, the carrier is not required to  
 27 deliver the goods to any claimant until the carrier has had a reasonable time  
 28 to decide the validity of the adverse claim or to bring a civil action to re-  
 29 quire all claimants to interplead.

30 (e) INTERPLEADER.—If at least 2 persons claim title to or possession of  
 31 the goods, the common carrier may—

32 (1) bring a civil action to interplead all known claimants to the  
 33 goods; or

34 (2) require those claimants to interplead as a defense in an action  
 35 brought against the carrier for nondelivery.

36 (f) THIRD PERSON CLAIMS NOT A DEFENSE.—Except as provided in  
 37 subsections (b), (d), and (e) of this section, title or a right of a third person  
 38 is not a defense to an action brought by the consignee of a nonnegotiable  
 39 bill of lading or by the holder of a negotiable bill against the common car-  
 40 rier for failure to deliver the goods on demand unless enforced by legal proc-  
 41 ess.

**§ 80111. Liability for delivery of goods**

(a) GENERAL RULES.—A common carrier is liable for damages to a person having title to, or right to possession of, goods when—

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title;

(2) the carrier makes a delivery under section 80110(b)(2) or (3) of this title after being requested by or for a person having title to, or right to possession of, the goods not to make the delivery; or

(3) at the time of delivery under section 80110(b)(2) or (3) of this title, the carrier has information it is delivering the goods to a person not entitled to their possession.

(b) EFFECTIVENESS OF REQUEST OR INFORMATION.—A request or information is effective under subsection (a)(2) or (3) of this section only if—

(1) an officer or agent of the carrier, whose actual or apparent authority includes acting on the request or information, has been given the request or information; and

(2) the officer or agent has had time, exercising reasonable diligence, to stop delivery of the goods.

(c) FAILURE TO TAKE AND CANCEL BILLS.—Except as provided in subsection (d) of this section, if a common carrier delivers goods for which a negotiable bill of lading has been issued without taking and canceling the bill, the carrier is liable for damages for failure to deliver the goods to a person purchasing the bill for value in good faith whether the purchase was before or after delivery and even when delivery was made to the person entitled to the goods. The carrier also is liable under this paragraph if part of the goods are delivered without taking and canceling the bill or plainly noting on the bill that a partial delivery was made and generally describing the goods or the remaining goods kept by the carrier.

(d) EXCEPTIONS TO LIABILITY.—A common carrier is not liable for failure to deliver goods to the consignee or owner of the goods or a holder of the bill if—

(1) a delivery described in subsection (c) of this section was compelled by legal process;

(2) the goods have been sold lawfully to satisfy the carrier's lien;

(3) the goods have not been claimed; or

(4) the goods are perishable or hazardous.

**§ 80112. Liability under negotiable bills issued in parts, sets, or duplicates**

(a) PARTS AND SETS.—A negotiable bill of lading issued in a State for the transportation of goods to a place in the 48 contiguous States or the



District of Columbia may not be issued in parts or sets. A common carrier issuing a bill in violation of this subsection is liable for damages for failure to deliver the goods to a purchaser of one part for value in good faith even though the purchase occurred after the carrier delivered the goods to a holder of one of the other parts.

(b) **DUPLICATES.**—When at least 2 negotiable bills of lading are issued in a State for the same goods to be transported to a place in the 48 contiguous States or the District of Columbia, the word “duplicate” or another word indicating that the bill is not an original must be put plainly on the face of each bill except the original. A common carrier violating this subsection is liable for damages caused by the violation to a purchaser of the bill for value in good faith as an original bill even though the purchase occurred after the carrier delivered the goods to the holder of the original bill.

**§80113. Liability for nonreceipt, misdescription, and improper loading**

(a) **LIABILITY FOR NONRECEIPT AND MISDESCRIPTION.**—Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right of stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(b) **NONLIABILITY OF CARRIERS.**—A common carrier issuing a bill of lading is not liable under subsection (a) of this section—

(1) when the goods are loaded by the shipper;

(2) when the bill—

(A) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or

(B) is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count”, or words of the same meaning; and

(3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.

(c) **LIABILITY FOR IMPROPER LOADING.**—A common carrier issuing a bill of lading is not liable for damages caused by improper loading if—

(1) the shipper loads the goods; and

(2) the bill contains the words “shipper’s weight, load, and count”, or words of the same meaning indicating the shipper loaded the goods.

(d) CARRIER'S DUTY TO DETERMINE KIND, QUANTITY, AND NUMBER.—

(1) When bulk freight is loaded by a shipper that makes available to the common carrier adequate facilities for weighing the freight, the carrier must determine the kind and quantity of the freight within a reasonable time after receiving the written request of the shipper to make the determination. In that situation, inserting the words "shipper's weight" or words of the same meaning in the bill of lading has no effect.

(2) When goods are loaded by a common carrier, the carrier must count the packages of goods, if package freight, and determine the kind and quantity, if bulk freight. In that situation, inserting in the bill of lading or in a notice, receipt, contract, rule, or tariff, the words "shipper's weight, load, and count" or words indicating that the shipper described and loaded the goods, has no effect except for freight concealed by packages.

**§ 80114. Lost, stolen, and destroyed negotiable bills**

(a) DELIVERY ON COURT ORDER AND SURETY BOND.—If a negotiable bill of lading is lost, stolen, or destroyed, a court of competent jurisdiction may order the common carrier to deliver the goods if the person claiming the goods gives a surety bond, in an amount approved by the court, to indemnify the carrier or a person injured by delivery against liability under the outstanding original bill. The court also may order payment of reasonable costs and attorney's fees to the carrier. A voluntary surety bond, without court order, is binding on the parties to the bond.

(b) LIABILITY TO HOLDER.—Delivery of goods under a court order under subsection (a) of this section does not relieve a common carrier from liability to a person to whom the negotiable bill has been or is negotiated for value without notice of the court proceeding or of the delivery of the goods.

**§ 80115. Limitation on use of judicial process to obtain possession of goods from common carriers**

(a) ATTACHMENT AND LEVY.—Except when a negotiable bill of lading was issued originally on delivery of goods by a person that did not have the power to dispose of the goods, goods in the possession of a common carrier for which a negotiable bill has been issued may be attached through judicial process or levied on in execution of a judgment only if the bill is surrendered to the carrier or its negotiation is enjoined.

(b) DELIVERY.—A common carrier may be compelled by judicial process to deliver goods under subsection (a) of this section only when the bill is surrendered to the carrier or impounded by the court.

**§ 80116. Criminal penalty**

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) violates this chapter with intent to defraud; or

(2) knowingly or with intent to defraud—

(A) falsely makes, alters, or copies a bill of lading subject to this chapter;

(B) utters, publishes, or issues a falsely made, altered, or copied bill subject to this chapter; or

(C) negotiates or transfers for value a bill containing a false statement.

## CHAPTER 803—CONTRABAND

Sec.

80301. Definitions.

80302. Prohibitions.

80303. Seizure and forfeiture.

80304. Administrative.

80305. Availability of certain appropriations.

80306. Relationship to other laws.

### § 80301. Definitions

In this chapter—

(1) “aircraft” means a contrivance used, or capable of being used, for transportation in the air.

(2) “vehicle” means a contrivance used, or capable of being used, for transportation on, below, or above land, but does not include aircraft.

(3) “vessel” means a contrivance used, or capable of being used, for transportation in water, but does not include aircraft.

### § 80302. Prohibitions

(a) DEFINITION.—In this section, “contraband” means—

(1) a narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), including marihuana (as defined in section 102 of that Act (21 U.S.C. 802)), that—

(A) is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;

(B) is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;

(C) is acquired by theft, robbery, or burglary and transported—

(i) in the District of Columbia or a territory or possession of the United States; or

(ii) from a place in a State, the District of Columbia, a territory or possession of the United States, or the Canal Zone, to a place in another State, the District of Columbia, a territory or possession, or the Canal Zone; or

(D) does not bear tax-paid internal revenue stamps required by those laws or regulations;

(2) a firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 (26 U.S.C. 5801 et seq.);

(3) a forged, altered, or counterfeit—

(A) coin or an obligation or other security of the United States Government (as defined in section 8 of title 18); or

(B) coin, obligation, or other security of the government of a foreign country;

(4) material or equipment used, or intended to be used, in making a coin, obligation, or other security referred to in clause (3) of this subsection; or

(5) a cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114.

(b) PROHIBITIONS.—A person may not—

(1) transport contraband in an aircraft, vehicle, or vessel;

(2) conceal or possess contraband on an aircraft, vehicle, or vessel;

or

(3) use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.

### **§ 80303. Seizure and forfeiture**

The Secretary of the Treasury or the Governor of Guam or of the Northern Mariana Islands as provided in section 80304 of this title, or a person authorized by another law to enforce section 80302 of this title, shall seize an aircraft, vehicle, or vessel involved in a violation of section 80302 and place it in the custody of a person designated by the Secretary or appropriate Governor, as the case may be. The seized aircraft, vehicle, or vessel shall be forfeited, except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State. However, an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when—

(1) the owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;

(2) the owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or

(3) the master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.

1   **§ 80304. Administrative**

2       (a) GENERAL.—Except as provided in subsections (b) and (c) of this sec-  
3   tion, the Secretary of the Treasury—

4           (1) may designate officers, employees, agents, or other persons to  
5       carry out this chapter; and

6           (2) shall prescribe regulations to carry out this chapter.

7       (b) IN GUAM.—The Governor of Guam—

8           (1) or officers of the government of Guam designated by the Gov-  
9       ernor shall carry out this chapter in Guam;

10          (2) may carry out laws referred to in section 80306(b) of this title  
11       with modifications the Governor decides are necessary to meet condi-  
12       tions in Guam; and

13          (3) may prescribe regulations to carry out this chapter in Guam.

14       (c) IN NORTHERN MARIANA ISLANDS.—The Governor of the Northern  
15   Mariana Islands—

16          (1) or officers of the government of the Northern Mariana Islands  
17       designated by the Governor shall carry out this chapter in the Northern  
18       Mariana Islands;

19          (2) may carry out laws referred to in section 80306(b) of this title  
20       with modifications the Governor decides are necessary to meet condi-  
21       tions in the Northern Mariana Islands; and

22          (3) may prescribe regulations to carry out this chapter in the North-  
23       ern Mariana Islands.

24       (d) CUSTOMS LAWS ON SEIZURE AND FORFEITURE.—The Secretary, or  
25   the Governor of Guam or of the Northern Mariana Islands as provided in  
26   subsection (b) and (c) of this section, shall carry out the customs laws on  
27   the seizure and forfeiture of aircraft, vehicles, and vessels under this chap-  
28   ter.

29   **§ 80305. Availability of certain appropriations**

30       Appropriations for enforcing customs, narcotics, counterfeiting, or inter-  
31   nal revenue laws are available to carry out this chapter.

32   **§ 80306. Relationship to other laws**

33       (a) CHAPTER AS ADDITIONAL LAW.—This chapter is in addition to an-  
34   other law—

35          (1) imposing, or authorizing the compromise of, fines, penalties, or  
36       forfeitures; or

37          (2) providing for seizure, condemnation, or disposition of forfeited  
38       property, or the proceeds from the property.

39       (b) LAWS APPLICABLE TO SEIZURES AND FORFEITURES.—To the extent  
40   applicable and consistent with this chapter, the following apply to a seizure  
41   or forfeiture under this chapter:

(1) provisions of law related to the seizure, forfeiture, and condemnation of vehicles and vessels violating the customs laws.

(2) provisions of law related to the disposition of those vehicles or vessels or the proceeds from the sale of those vehicles or vessels.

(3) provisions of law related to the compromise of those forfeitures or claims related to those forfeitures.

(4) provisions of law related to the award of compensation to an informer about those forfeitures.

## CHAPTER 805—MISCELLANEOUS

Sec.

80501. Damage to transported property.

80502. Transportation of animals.

80503. Payments for inspection and quarantine services.

80504. Medals of honor.

### § 80501. Damage to transported property

(a) CRIMINAL PENALTY.—A person willfully damaging, or attempting to damage, property in the possession of an air carrier, motor carrier, or rail carrier and being transported in interstate or foreign commerce, shall be fined under title 18, imprisoned for not more than 10 years, or both. In a criminal proceeding under this section, a shipping document for the property is prima facie evidence of the places to which and from which the property was being transported.

(b) PROHIBITION AGAINST MULTIPLE PROSECUTIONS FOR SAME ACT.—A person may not be prosecuted for an act under this section when the person has been convicted or acquitted on the merits for the same act under the laws of a State, the District of Columbia, or a territory or possession of the United States.

### § 80502. Transportation of animals

(a) CONFINEMENT.—(1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

(2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for—

(A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

1 (B) 36 consecutive hours when the owner or person having custody  
 2 of animals being transported requests, in writing and separate from a  
 3 bill of lading or other rail form, that the 28-hour period be extended  
 4 to 36 hours.

5 (3) Time spent in loading and unloading animals is not included as part  
 6 of a period of confinement under this subsection.

7 (b) UNLOADING, FEEDING, WATERING, AND REST.—Animals being  
 8 transported shall be unloaded in a humane way into pens equipped for feed-  
 9 ing, water, and rest for at least 5 consecutive hours. The owner or person  
 10 having custody of the animals shall feed and water the animals. When the  
 11 animals are not fed and watered by the owner or person having custody,  
 12 the rail carrier, express carrier, or common carrier (except by air or water),  
 13 the receiver, trustee, or lessee of one of those carriers, or the owner or mas-  
 14 ter of a vessel transporting the animals—

15 (1) shall feed and water the animals at the reasonable expense of  
 16 the owner or person having custody, except that the owner or shipper  
 17 may provide food;

18 (2) has a lien on the animals for providing food, care, and custody  
 19 that may be collected at the destination in the same way that a trans-  
 20 portation charge is collected; and

21 (3) is not liable for detaining the animals for a reasonable period to  
 22 comply with subsection (a) of this section.

23 (c) NONAPPLICATION.—This section does not apply when animals are  
 24 transported in a vehicle or vessel in which the animals have food, water,  
 25 space, and an opportunity for rest.

26 (d) CIVIL PENALTY.—A rail carrier, express carrier, or common carrier  
 27 (except by air or water), a receiver, trustee, or lessee of one of those car-  
 28 riers, or an owner or master of a vessel that knowingly and willfully violates  
 29 this section is liable to the United States Government for a civil penalty of  
 30 at least \$100 but not more than \$500 for each violation. On learning of  
 31 a violation, the Attorney General shall bring a civil action to collect the pen-  
 32 alty in the district court of the United States for the judicial district in  
 33 which the violation occurred or the defendant resides or does business.

34 **§ 80503. Payments for inspection and quarantine services**

35 (a) GENERAL.—(1) In this subsection—

36 (A) “private aircraft” means a civilian aircraft not being used to  
 37 transport passengers or property for compensation.

38 (B) “private vessel” means a civilian vessel not being used—

39 (i) to transport passengers or property for compensation; or

40 (ii) in fishing or fish processing operations.

1       (2) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C.  
 2       1451), the owner, operator, or agent of a private aircraft or private vessel  
 3       may pay not more than \$25 for the services of an officer or employee of  
 4       the Department of Agriculture, the Customs Service, the Immigration and  
 5       Naturalization Service, or the Public Health Service (including an independ-  
 6       ent contractor performing an inspection service for the Public Health Serv-  
 7       ice) when the services are performed on a Sunday, holiday, or from 5 p.m.  
 8       through 8 a.m. on a weekday, and are related to the aircraft's or vessel's  
 9       arrival in, or departure from, the United States. However, the owner, opera-  
 10      tor, or agent does not have to pay for the services from 5 p.m. through 8  
 11      a.m. on a weekday when an officer or employee on regular duty is available  
 12      at the place of arrival or departure to perform services.

13      (3) The head of a department, agency, or instrumentality of the United  
 14      States Government providing services under paragraph (2) of this sub-  
 15      section shall collect the amount paid for the services and deposit the amount  
 16      in the Treasury. The amount shall be credited to the appropriation of the  
 17      department, agency, or instrumentality against which the expense of those  
 18      services was charged.

19      (b) LIMITATIONS ON REIMBURSEMENT.—(1) An owner or operator of an  
 20      aircraft is required to reimburse the head of a department, agency, or in-  
 21      strumentality of the Government for the expenses of performing an inspec-  
 22      tion or quarantine service related to the aircraft at a place of inspection  
 23      during regular service hours on a Sunday or holiday only to the same extent  
 24      that an owner or operator makes reimbursement for the service during regu-  
 25      lar service hours on a weekday. The head of the department, agency, or in-  
 26      strumentality may not assess an owner or operator of an aircraft for admin-  
 27      istrative overhead expenses for inspection or quarantine service provided by  
 28      the department, agency, or instrumentality at an entry airport.

29      (2) This subsection does not require reimbursement for costs incurred by  
 30      the Secretary of the Treasury in providing customs services described in sec-  
 31      tion 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of  
 32      1985 (19 U.S.C. 58c(e)(1)).

### 33      **§ 80504. Medals of honor**

34      (a) MEDALS.—The President may prepare and give a bronze medal of  
 35      honor with emblematic devices to an individual who by extreme daring en-  
 36      dangers that individual's life in trying to prevent, or save the life of another  
 37      in, a grave accident in the United States involving a rail carrier providing  
 38      transportation in interstate commerce or involving a motor vehicle on the  
 39      public streets, roads, or highways. The President may give a medal only  
 40      when sufficient evidence that the individual deserves the medal has been  
 41      filed under regulations prescribed by the President.



(b) RIBBONS, KNOTS, AND ROSETTES.—The President may give an individual who receives a medal a ribbon to be worn with the medal and a knot or rosette to be worn in place of the medal. The President shall prescribe the design for the ribbon, knot, and rosette. If the ribbon is lost, destroyed, or made unfit for use and the individual receiving the medal is not negligent, the President shall issue a new ribbon without charge to the individual.

(c) AVAILABILITY OF APPROPRIATIONS.—Appropriations made to the Secretary of Transportation are available to carry out this section.

#### PORTS OF ENTRY

Sec. 2. (a) The definitions in section 40102(a) of title 49, United States Code, apply to this section.

(b)(1) The Secretary of the Treasury may—

(A) designate ports of entry in the United States for civil aircraft arriving in the United States from a place outside the United States and property transported on that aircraft;

(B) detail to ports of entry officers and employees of the United States Customs Service the Secretary considers necessary;

(C) give an officer or employee of the United States Government stationed at a port of entry (with the consent of the head of the department, agency, or instrumentality of the Government with jurisdiction over the officer or employee) duties and powers of officers or employees of the Customs Service;

(D) by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions the Secretary considers necessary; and

(E) by regulation, apply to civil aircraft the laws and regulations on entry and clearance of vessels, to the extent and under conditions the Secretary considers necessary.

(2) A person violating a customs regulation prescribed under paragraph (1)(A)–(D) of this subsection or a public health or customs law or regulation made applicable to aircraft by a regulation under paragraph (1)(A)–(D) is liable to the Government for a civil penalty of \$5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws. The Secretary of the Treasury may remit or mitigate a penalty and forfeiture under this paragraph.

(3) A person violating a regulation made applicable under paragraph (1)(E) of this subsection or an immigration regulation prescribed under paragraph (1)(E) is liable to the Government for a civil penalty of \$5,000 for each violation. The Secretary of the Treasury or the Attorney General may remit or mitigate a penalty under this paragraph.

(4) In addition to any other penalty, when a controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on, or to have been unloaded from, an aircraft to which this subsection applies, the owner of, or individual commanding, the aircraft is liable to the Government for the penalties provided in section 584 for each violation unless the owner or individual, by a preponderance of the evidence, demonstrates that the owner or individual did not know, and by exercising the highest degree of care and diligence, could not have known, that a controlled substance was on the aircraft.

(5) If a violation under this subsection is by the owner or operator of, or individual commanding, the aircraft, the aircraft is subject to a lien for the penalty.

(c)(1) The Secretary of Agriculture by regulation may apply laws and regulations on animal and plant quarantine (including laws and regulations on importing, exporting, transporting, and quarantining animals, plants, animal and plant products, insects, bacterial and fungus cultures, viruses, and serums) to civil air navigation to the extent and under conditions the Secretary considers necessary.

(2) A person violating a law or regulation made applicable under paragraph (1) of this subsection is liable for the penalties provided under that law or regulation.

(d) A decision to remit or mitigate a civil penalty under this section is final. When libel proceedings are pending during a proceeding to remit or mitigate a penalty, the appropriate Secretary shall notify the Attorney General of the remission or mitigation proceeding.

(e)(1) An aircraft subject to a lien under this section may be seized summarily by and placed in the custody of a person authorized by regulations of the appropriate Secretary or the Attorney General. A report of the case shall be sent to the Attorney General. The Attorney General shall bring promptly a civil action in rem to enforce the lien or notify the appropriate Secretary that the action will not be brought.

(2) An aircraft seized under this section shall be released from custody when—

(A) the civil penalty or amount not remitted or mitigated is paid;

(B) the aircraft is seized under process of a court in a civil action in rem to enforce the lien;

(C) the Attorney General gives notice that a civil action will not be brought under paragraph (1) of this subsection; or

(D) a bond is deposited with the appropriate Secretary or the Attorney General in an amount and with a surety the appropriate Secretary

or the Attorney General prescribes, conditioned on payment of the penalty or amount not remitted or mitigated.

(f) A civil penalty under this section may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a trial by jury of an issue of fact if the value of the matter in controversy is more than \$20. An issue of fact tried by jury may be reexamined only under common law rules.

(g) Necessary amounts may be appropriated to allow the head of a department, agency, or instrumentality of the Government to acquire space at a public airport (as defined in section 47102 of title 49) when the head decides the space is necessary to carry out inspections, clearance, collection of taxes or duties, or a similar responsibility of the head, related to transporting passengers or property in air commerce. The head must consult with the Secretary of Transportation before making a decision on space.

#### MASS TRANSPORTATION EXEMPTION

Sec. 3. Chapter 105 of title 49, United States Code, is amended as follows:

(1) Insert immediately after section 10530 the following new section:

#### **“§ 10531. Mass transportation exemption**

“(a) DEFINITIONS.—The definitions in section 5302(a) of this title apply to this section.

“(b) PETITION FOR GRANTING EXEMPTIONS.—A State or local governmental authority may petition the Interstate Commerce Commission for an exemption from the jurisdiction of the Commission under this subchapter for mass transportation the authority provides or has provided to it by contract. Not later than 180 days after the Commission receives a petition and after notice and a reasonable opportunity for a proceeding, the Commission shall exempt the State, local governmental authority, or contractor unless the Commission finds that—

“(1) the public interest would not be served by an exemption;

“(2) the exemption would result in an unreasonable burden on interstate or foreign commerce; or

“(3) a State or local governmental authority may not regulate the mass transportation to be exempt under this section.

“(c) APPLICATION OF OTHER LAWS.—All applicable laws of the United States related to safety and to representation of employees for collective bargaining purposes, retirement, annuities, and unemployment systems, and all other laws related to employee-employer relations, apply to a State or

1 local governmental authority that was granted, or whose contractor was  
2 granted, an exemption under this section.

3 “(d) CHANGING AND REVOKING EXEMPTIONS.—The Commission may  
4 change or revoke an exemption if it finds that new evidence, material error,  
5 or changed circumstances exist that materially affect the original order. The  
6 Commission may act on its own initiative or on application of an interested  
7 party.”.

8 (2) Insert immediately below item 10530 in the analysis of the chap-  
9 ter the following new item:  
“10531. Mass transportation exemption.”.

#### 10 CONFORMING PROVISIONS

11 Sec. 4. (a) Section 401 of the Federal Election Campaign Act of 1971  
12 (2 U.S.C. 451) is amended by striking “Civil Aeronautics Board” and  
13 “Board or Commission” and substituting “Secretary of Transportation”  
14 and “Secretary under subpart II of part A of subtitle VII of title 49, United  
15 States Code, or such Commission,”, respectively.

16 (b) Title 5, United States Code, is amended as follows:

17 (1) In section 5109, add at the end of the section the following new  
18 subsection:

19 “(c)(1) The position held by a fully experienced and qualified railroad  
20 safety inspector of the Department of Transportation shall be classified in  
21 accordance with this chapter, but not lower than GS–12.

22 “(2) The position held by a railroad safety specialist of the Department  
23 shall be classified in accordance with this chapter, but not lower than GS–  
24 13.”.

25 (2) In section 5315, strike—

26 “Administrator of the St. Lawrence Seaway Development Corpora-  
27 tion.”

28 and substitute—

29 “Administrator of the Saint Lawrence Seaway Development Corpora-  
30 tion.”.

31 (3) In section 8172, strike “Secretary of the Treasury” and sub-  
32 stitute “Secretary of Transportation”.

33 (c) Section 511(e) of the Motor Vehicle Information and Cost Savings Act  
34 (15 U.S.C. 2011(e)) is amended to read as follows:

35 “(e) For purposes of this section—

36 “(1) ‘retrofit device’ means any component, equipment, or other de-  
37 vice—

38 “(A) which is designed to be installed in or on an automobile  
39 (as an addition to, as a replacement for, or through alteration or

1 modification of, any original component, equipment, or other de-  
2 vice); and

3 “(B) which any manufacturer, dealer, or distributor of such de-  
4 vice represents will provide higher fuel economy than would have  
5 resulted with the automobile as originally equipped,  
6 as determined under rules of the Administrator. Such term also in-  
7 cludes a fuel additive for use in an automobile.

8 “(2) the definitions in section 32901(a) of title 49, United States  
9 Code, apply.”.

10 (d) Section 6001(1) of title 18, United States Code, is amended by strik-  
11 ing “the Civil Aeronautics Board.”.

12 (e) Chapter 33 of title 28, United States Code, is amended as follows:

13 (1) Insert immediately after section 537 the following new section:

14 **“§ 538. Investigation of aircraft piracy and related violations**

15 “The Federal Bureau of Investigation shall investigate any violation of  
16 section 46314 or chapter 465 of title 49.”.

17 (2) In the analysis of chapter 33, insert immediately after item 537  
18 the following new item:

“538. Investigation of aircraft piracy and related violations.”.

19 (f)(1) Title 31, United States Code, is amended as follows:

20 (A) In section 309, strike “section 2A(a)” and substitute “section  
21 3(a)”.

22 (B) In section 503(b)(9), strike “perform” and substitute “Per-  
23 form”.

24 (C) In the analysis of chapter 7, immediately above item 781,  
25 strike—  
“Sec.”.

26 (D) In section 782, strike “612a).” and substitute “612a)).”.

27 (E) In section 1105(a), strike—

28 “(26) a separate”

29 and substitute—

30 “(27) a separate”.

31 (F) Section 1352 is amended as follows:

32 (i) Immediately below subsection (b)(7), strike—

33 “(C)(1) Any”

34 and substitute—

35 “(c)(1) Any”.

36 (ii) In subsection (e)(1)(C), strike “appropriated” and “law”  
37 and substitute “appropriated” and “law.”, respectively.

38 (iii) In subsection (h)(7), strike “agency” and “guaranty” and  
39 substitute “agency.” and “guaranty.”, respectively.

1 (G) The analysis of chapter 33 is amended by inserting below item  
2 3333 the following new item:

“3334. Cancellation and proceeds distribution of Treasury checks.”.

3 (H) In section 3302(c)(1), strike the comma at the end and sub-  
4 stitute a period.

5 (I) In section 3330(d)(1)(B), strike “Administrator” and substitute  
6 “Secretary of Veterans Affairs”.

7 (J)(i) In section 3512(c)(1), strike “subsection (a)(3)” and sub-  
8 stitute “subsection (b)(3)”.

9 (ii) In section 3512(d)(1) and (2), strike “subsection (b)” wherever  
10 it appears and substitute “subsection (c)”.

11 (K) In section 3551(1), strike “an Federal” and substitute “a Fed-  
12 eral”.

13 (L) In section 3552, strike “section 111(h)” and “(40 U.S.C.  
14 759(h))” and substitute “section 111(f)” and “(40 U.S.C. 759(f))”, re-  
15 spectively.

16 (M) In section 3718(b)(3)(A), strike “15 U.S.C. 6376(d)(3)(C)(i)”  
17 and substitute “15 U.S.C. 637(d)(3)(C)(i)”.

18 (N) In section 3726(d), strike “miscellaneous receipt” and substitute  
19 “miscellaneous receipts”.

20 (O) In section 3729(e), strike “1954” and substitute “1986”.

21 (P) In section 3730(e)(2)(B), strike “section paragraphs (1)” and  
22 substitute “paragraphs (1)”.

23 (Q) In section 3801(a)(7)(B)(ii), strike “section 3803 of such title”  
24 and substitute “section 3803 of this title”.

25 (R) In section 5112(h), strike “title 31, United States Code” and  
26 substitute “this title”.

27 (S) In section 6101(4)(B), strike “agency” and substitute “agency.”.

28 (T) In the catchline of section 6202, strike “**form**” and substitute  
29 “**form,**”.

30 (U)(i) At the end of the analysis of chapter 69, add the following  
31 new item:

“6907. State legislation requiring reallocation or redistribution of payments to smaller units  
of general purpose government.”.

32 (ii) Section 6907 is amended by adding before subsection (a) the fol-  
33 lowing:

34 “§ 6907. State legislation requiring reallocation or redis-  
35 tribution of payments to smaller units of general  
36 purpose government”.

37 (V) In section 7102(3), strike “political” and substitute “political”.

38 (W) Section 7502 is amended as follows:

1 (i) In subsection (b)(2)(A), strike “the date of enactment of this  
2 chapter” and substitute “October 19, 1984”.

3 (ii) In subsection (b)(2)(B), strike “such date” and substitute  
4 “October 19, 1984”.

5 (iii) In subsection (d), strike paragraph (5) and redesignate  
6 paragraph (6) as paragraph (5).

7 (iv) In subsection (g), strike “section 3512(b)” and substitute  
8 “section 3512(c)”.

9 (X) In section 7503(a), strike “To the extend” and substitute “To  
10 the extent”.

11 (Y)(i) Subtitle V is amended by adding at the end of the subtitle  
12 the following new chapter:

13 **“CHAPTER 77—LOAN REQUIREMENTS**

“Sec.

“7701. Taxpayer identifying number.

14 **“§ 7701. Taxpayer identifying number**

15 “(a) In this section—

16 “(1) ‘included Federal loan program’ has the same meaning given  
17 that term in section 6103(l)(3)(C) of the Internal Revenue Code of  
18 1986 (26 U.S.C. 6103(l)(3)(C)).

19 “(2) ‘taxpayer identifying number’ means the identifying number re-  
20 quired under section 6109 of the Internal Revenue Code of 1986 (26  
21 U.S.C. 6109).

22 “(b) The head of an agency administering an included Federal loan pro-  
23 gram shall require a person applying for a loan under the program to pro-  
24 vide that person’s taxpayer identifying number.”.

25 (ii) The analysis of subtitle V is amended by adding immediately  
26 after item 75 the following new item:

“77. Loan Requirements ..... 7701”.

27 (Z) In section 9101(2)(K), strike “The” and substitute “the”.

28 (AA) In section 9110(e)(1), strike “subparagraph” and substitute  
29 “section”.

30 (2) Effective December 22, 1987, section 407 of The Judiciary Appro-  
31 priation Act, 1988 (Public Law 100–202, 101 Stat. 1329–26), is amended  
32 to read as follows:

33 “Sec. 407. Section 1344 of title 31, United States Code, is amended as  
34 follows:

35 “(1) In subsection (b)—

36 “(A) redesignate clauses (2)–(8) as clauses (3)–(9), respectively;

37 “(B) insert below clause (1) the following:

1 “‘(2) the Chief Justice and the Associate Justices of the Su-  
2 preme Court;’;

3 “(C) in clause (3)(B), as redesignated by clause (A) of this  
4 paragraph, strike ‘subparagraph (A) of this paragraph’ and sub-  
5 stitute ‘subclause (A) of this clause’; and

6 “(D) in the last sentence, strike ‘paragraph (8)’ and substitute  
7 ‘clause (9)’.

8 “(2) In subsection (d)—

9 “(A) in paragraphs (1) and (2), strike ‘paragraph (8) of sub-  
10 section (b)’ wherever it appears and substitute ‘subsection (b)(9)  
11 of this section’;

12 “(B) in paragraph (3), strike ‘subsections (a)(2), (b)(2)(B), and  
13 (b)(8)’ and ‘subsection (b)(8)’ and substitute ‘subsections (a)(2)  
14 and (b)(3)(B) and (9)’ and ‘subsection (b)(9)’, respectively; and

15 “(C) in paragraph (4), strike ‘paragraphs (1), (2)(B), and (8)  
16 of subsection (b)’ and ‘paragraph (8) of subsection (b), and the  
17 expected duration of any authorization under such paragraph’ and  
18 substitute ‘subsection (b)(1), (3)(B), and (9) of this section’ and  
19 ‘subsection (b)(9), and the expected duration of any authorization  
20 under subsection (b)(9)’, respectively.

21 “(3) In subsection (e)(1), strike ‘(b)(8)’ and substitute ‘(b)(9)’.”.

22 (3) Effective September 27, 1988, the last sentence of the paragraph  
23 headed “PAYMENTS IN LIEU OF TAXES” in title I of the Act of Sep-  
24 tember 27, 1988 (Public Law 100–446, 102 Stat. 1775), is amended to  
25 read as follows: “Section 6901(2)(A) of title 31, United States Code, is  
26 amended by striking ‘existing in Alaska on October 20, 1976’.”.

27 (g) Title 39, United States Code, is amended as follows:

28 (1) In section 5007—

29 (A) insert the subsection designation “(a)” at the beginning of  
30 the text of the section; and

31 (B) add at the end of the section the following new subsection:

32 “(b)(1) In this subsection, ‘air carrier’ and ‘aircraft’ have the same mean-  
33 ings given those terms in section 40102(a) of title 49.

34 “(2) An air carrier engaged in transporting mail shall carry without  
35 charge on any plane it operates those agents and officers of the Postal Serv-  
36 ice traveling on official business related to transporting mail by aircraft, as  
37 prescribed by regulations of the Secretary of Transportation, on exhibiting  
38 credentials.”.

39 (2) Amend section 5402 as follows:

40 (A) In subsection (a), strike “section 1302” and substitute  
41 “section 40101(a)”.



1 (B) In subsection (b), strike “sections 1371(k) and 1386(b)”,  
 2 “sections 1301–1542”, and “sections 1371–1386” and substitute  
 3 “sections 40109(a) and (c)–(h) and 42112”, “part A of subtitle  
 4 VII”, and “chapters 411 and 413”, respectively.

5 (C) In subsection (d)—

- 6 (i) insert “determine rates and” after “may”; and
- 7 (ii) strike “and overseas”.

8 (D) In subsection (e)—

- 9 (i) strike “‘overseas air transportation’,”; and
- 10 (ii) strike “section 101 of the Federal Aviation Act of 1958  
 11 (49 U.S.C. 1301)” and substitute “section 40102(a) of title  
 12 49”.

13 (h) Section 382 of the Energy Policy and Conservation Act (42 U.S.C.  
 14 6362) is amended as follows:

15 (1) Strike subsection (a) and substitute the following:

16 “(a) In this section, ‘agency’ means—

17 “(1) the Department of Transportation with respect to part A of  
 18 subtitle VII of title 49, United States Code;

19 “(2) the Interstate Commerce Commission;

20 “(3) the Federal Maritime Commission; and

21 “(4) the Federal Power Commission.”.

22 (2) In subsection (b), strike “subsection (a)(1)” and substitute “sub-  
 23 section (a)”.

24 (i) The Act of April 22, 1908 (45 U.S.C. 51 et seq.), is amended by in-  
 25 serting immediately after section 4 the following new section:

26 “SEC. 4A. A regulation, standard, or requirement in force, or prescribed  
 27 by the Secretary of Transportation under chapter 201 of title 49, United  
 28 States Code, or by a State agency that is participating in investigative and  
 29 surveillance activities under section 20105 of title 49, is deemed to be a  
 30 statute under sections 3 and 4 of this Act.”.

31 (j) Title 49, United States Code, is amended as follows:

32 (1) In section 102, redesignate subsection (e), as enacted by section  
 33 1(b) of the Act of January 12, 1983 (Public Law 97–449, 96 Stat.  
 34 2414), as subsection (f).

35 (2) In section 104(b)(1), strike “Admininstrator” and substitute  
 36 “Administrator”.

37 (3) Amend section 106 as follows:

38 (A) In subsection (f), strike “Secretary shall” and substitute  
 39 “Secretary of Transportation shall”.

40 (B) Subsection (g) is amended to read as follows:

“(g) DUTIES AND POWERS OF ADMINISTRATOR.—(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

“(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), (c), and (d), 40114(a), 40119, 44501(a) and (c), 44502(a)(1), (b), and (c), 44504, 44505, 44507, 44508, 44511–44513, 44701–44716, 44718(c), 44721(a), 44901, 44902, 44903(a)–(c) and (e), 44906, 44912, 44935–44937, and 44938(a) and (b), chapter 451, sections 45302, 45303, 46104, 46301(d) and (h)(2), 46303(c), 46304–46308, 46310, 46311, and 46313–46316, chapter 465, and sections 47504(b)(related to flight procedures), 47508(a), and 48107 of this title; and

“(B) additional duties and powers prescribed by the Secretary of Transportation.

“(2) In carrying out sections 40119, 44901, 44903(a)–(c) and (e), 44906, 44912, 44935–44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.”.

(C) In subsection (k), insert “to the Secretary of Transportation” immediately after “appropriated”.

(4) In section 108(a)—

(A) strike—

“(a) Except when operating as a service in the Navy, the”

and substitute—

“(a)(1) The”; and

(B) add at the end of subsection (a) the following new paragraph:

“(2) Notwithstanding paragraph (1) of this subsection, the Coast Guard, together with the duties and powers of the Coast Guard, shall operate as a service in the Navy as provided under section 3 of title 14.”.

(5)(A) In section 110(a), strike “St. Lawrence” and substitute “Saint Lawrence”.

(B) In the analysis of chapter 1, strike—

“110. St. Lawrence Seaway Development Corporation.

“110. Saint Lawrence Seaway Development Corporation.

“111. Bureau of Transportation Statistics.”.

and substitute—

“110. Saint Lawrence Seaway Development Corporation.

“111. Bureau of Transportation Statistics.”.

1 (6)(A) Chapter 3 is amended by inserting immediately after section  
2 303 the following new section:

3 **“§ 303a. Development of water transportation**

4 “(a) POLICY.—It is the policy of Congress—

5 “(1) to promote, encourage, and develop water transportation, serv-  
6 ice, and facilities for the commerce of the United States; and

7 “(2) to foster and preserve rail and water transportation.

8 “(b) DEFINITION.—In this section, ‘inland waterway’ includes the Great  
9 Lakes.

10 “(c) REQUIREMENTS.—The Secretary of Transportation shall—

11 “(1) investigate the types of vessels suitable for different classes of  
12 inland waterways to promote, encourage, and develop inland waterway  
13 transportation facilities for the commerce of the United States;

14 “(2) investigate water terminals, both for inland waterway traffic  
15 and for through traffic by water and rail, including the necessary  
16 docks, warehouses, and equipment, and investigate railroad spurs and  
17 switches connecting with those water terminals, to develop the types  
18 most appropriate for different locations and for transferring passengers  
19 or property between water carriers and rail carriers more expeditiously  
20 and economically;

21 “(3) consult with communities, cities, and towns about the location  
22 of water terminals, and cooperate with them in preparing plans for ter-  
23 minal facilities;

24 “(4) investigate the existing status of water transportation on the  
25 different inland waterways of the United States to learn the extent to  
26 which—

27 “(A) the waterways are being used to their capacity and are  
28 meeting the demands of traffic; and

29 “(B) water carriers using those waterways are interchanging  
30 traffic with rail carriers;

31 “(5) investigate other matters that may promote and encourage in-  
32 land water transportation; and

33 “(6) compile, publish, and distribute information about transpor-  
34 tation on inland waterways that the Secretary considers useful to the  
35 commercial interests of the United States.”.

36 (B) The analysis of chapter 3 is amended by inserting immediately  
37 after item 303 the following new item:

“303a. Development of water transportation.”.

38 (7) Amend section 329 as follows:

39 (A) In subsection (b)(1)—

(i) strike “title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.)” and substitute “chapter 11 of this title”;

(ii) strike “and overseas” and “or overseas” wherever it appears; and

(iii) strike “section 419 of the Federal Aviation Act of 1958” and substitute “subchapter II of chapter 417 of this title”.

(B) In subsection (d), strike “the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)” and substitute “part A of subtitle VII of this title”.

(8) In section 331(b), strike “services, supplies, and facilities provided under subsection (a)(1), (2), and (3) of this section” and substitute “medical treatment provided under subsection (a)(1) of this section and for supplies and services provided under subsection (a)(2) and (3) of this section”.

(9)(A) Sections 334 and 335 are repealed.

(B) Items 334 and 335 in the analysis of chapter 3 are repealed.

(10)(A) Chapter 3 is amended by adding immediately after section 336 the following:

**“§ 337. Budget request for the Director of Intelligence and Security**

“The annual budget the Secretary of Transportation submits shall include a specific request for the Office of the Director of Intelligence and Security. In deciding on the budget request for the Office, the Secretary shall consider recommendations in the annual report submitted under section 44938(a) of this title.

“SUBCHAPTER III—MISCELLANEOUS

**“§ 351. Judicial review of actions in carrying out certain transferred duties and powers**

“(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, the Federal Highway Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

“(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Act applies to the Secretary or Administrator when carrying out the duty or power.

“(c) NONAPPLICATION.—This section does not apply to a duty or power transferred from the Interstate Commerce Commission to the Secretary under section 6(e)(1)–(4) and (6)(A) of the Act.

**“§ 352. Authority to carry out certain transferred duties and powers**

“In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670, 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Highway Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.

**“§ 353. Toxicological testing of officers and employees**

“(a) COLLECTING SPECIMENS.—When the Secretary of Transportation or the head of a component of the Department of Transportation conducts post-accident or post-incident toxicological testing of an officer or employee of the Department, the Secretary or head shall collect the specimen from the officer or employee as soon as practicable after the accident or incident. The Secretary or head shall try to collect the specimen not later than 4 hours after the accident or incident.

“(b) REPORTS.—The head of each component shall submit a report to the Secretary on the circumstances about the amount of time required to collect the specimen for a toxicological test conducted on an officer or employee who is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the National Transportation Safety Board.

“(c) NONCOMPLIANCE NOT A DEFENSE.—An officer or employee required to submit to toxicological testing may not assert failure to comply with this section as a claim, cause of action, or defense in an administrative or judicial proceeding.”.

(B) The analysis of chapter 3 is amended by adding immediately after item 336 the following:

“337. Budget request for the Director of Intelligence and Security.

## “SUBCHAPTER III—MISCELLANEOUS

“351. Judicial review of actions in carrying out certain transferred duties and powers.

“352. Authority to carry out certain transferred duties and powers.

“353. Toxicological testing of officers and employees.”.

1 (11)(A) In section 501(a), strike clauses (4)–(9).

2 (B) Strike section 508.

3 (C) In the analysis of chapter 105, strike the item related to section  
4 508.

5 (D) In section 521(b)(2)(A), strike “section 508” and substitute  
6 “chapter 59”.

7 (12) In sections 502(e)(2) and 10321(d)(3), insert “judge” after  
8 “United States magistrate”.

9 (13) Section 10362(b)(5) is amended to read as follows:

10 “(5) prescribe regulations that contain standards for the computa-  
11 tion of subsidies for rail passenger transportation (except passenger  
12 transportation compensation disputes subject to the jurisdiction of the  
13 Commission under sections 24308(a) and 24903(c)(2) of this title) that  
14 are consistent with the compensation principles described in the final  
15 system plan established under the Regional Rail Reorganization Act of  
16 1973 (45 U.S.C. 701 et seq.) and that avoid cross-subsidization among  
17 commuter, intercity, and freight rail transportation;”.

18 (14) In sections 10363(c) and 10383(c), strike “rate for GS-18”  
19 and substitute “maximum rate payable under section 5376 of title 5”.

20 (15) In section 10501(d)—

21 (A) strike “procedures of this title” and substitute “procedures  
22 of this subtitle”; and

23 (B) strike “provided in this title” and substitute “provided in  
24 this subtitle”.

25 (16) In section 10504—

26 (A) strike “local public body” wherever it appears and sub-  
27 stitute “local governmental authority”;

28 (B) strike “rail mass transportation” wherever it appears and  
29 substitute “mass transportation”;

30 (C) in subsection (a)(1)(A), strike “section 1608(c)(2)” and  
31 substitute “section 5302(a)”; and

32 (D) in subsection (a)(2), strike “section 1608(c)(5)” and sub-  
33 stitute “section 5302(a)”.

34 (17) In section 10526(a)—

35 (A) in clause (8)(B), strike “Civil Aeronautics Board or its suc-  
36 cessor agency” and substitute “Secretary of Transportation”;

37 (B) in clause (10), strike “work.” and substitute “work;”;

38 (C) in clause (13), strike “or”; and

- 1 (D) in clause (14), strike “title.” and substitute “title; or”.
- 2 (18) In section 10530(i)(3), strike “notified” and substitute “noti-
- 3 fied”.
- 4 (19) In section 10701a(b)(3), strike “policy of this title” and sub-
- 5 stitute “policy of this subtitle”.
- 6 (20) In section 10705a(g)(3)—
- 7 (A) before clause (A), strike “provision of this title” and sub-
- 8 stitute “provision of this subtitle”; and
- 9 (B) in clause (A), strike “service over any rate” and substitute
- 10 “service over any route”.
- 11 (21) In section 10707(d)—
- 12 (A) in paragraph (2), strike “under this title” and substitute
- 13 “under this subtitle”; and
- 14 (B) in paragraph (3), strike “title” wherever it appears and
- 15 substitute “subtitle”.
- 16 (22) In section 10707a(b)(1), strike “paragraph (2)” and substitute
- 17 “paragraph (3)”.
- 18 (23) In section 10731(e), strike “provision of this title” and sub-
- 19 stitute “provision of this subtitle”.
- 20 (24) In section 10749(b)(2), strike “Civil Aeronautics Board under
- 21 the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)” and
- 22 substitute “Secretary of Transportation under part A of subtitle VII
- 23 of this title”.
- 24 (25) In section 10751(b), strike “purposes of this title” and sub-
- 25 stitute “purposes of this subtitle”.
- 26 (26) In section 10905(d)(1) and (e), strike “government authority”
- 27 and substitute “governmental authority”.
- 28 (27) In section 10910—
- 29 (A) in subsection (a)(1), strike “government authority” and
- 30 substitute “governmental authority”; and
- 31 (B) in subsection (g)(1), strike “provisions of this title” and
- 32 substitute “provisions of this subtitle”.
- 33 (28) In section 10924(e), insert “of” after “protection”.
- 34 (29) In the analysis of chapter 111—
- 35 (A) in item 11128, strike “Water” and substitute “War”; and
- 36 (B) in item 11142, strike “systems” and substitute “system”.
- 37 (30) In section 11162(a), strike “proceedings under this title” and
- 38 substitute “proceedings under this subtitle”.
- 39 (31) In section 11163, strike “purposes of this title” and substitute
- 40 “purposes of this subtitle”.

1           (32) In section 11166(a), strike “pursuant to this title” and sub-  
2       stitute “under this subtitle”.

3           (33) In section 11167, strike “under this title” and substitute  
4       “under this subtitle”.

5           (34) In section 11501(b)(3)(A), strike “title” and substitute “sub-  
6       title”.

7           (35) In section 11909(b), strike “1966,,” and substitute “1966,”.

8       (k) Effective January 1, 1999, the following sections of title 49, United  
9       States Code, as enacted by section 1 of this Act, are amended as follows:

10           (1) In sections 41107, 41901(b)(1), 41902(a), and 41903,  
11       strike “transportation or between places in Alaska” wherever it  
12       appears and substitute “transportation”.

13           (2) Strike section 41901(g).

14           (3) In section 41902(b)—

15               (A) strike clause (3); and

16               (B) in clause (4), strike “clauses (1)–(3)” and substitute  
17       “clauses (1) and (2)”.

18       (l) The Act of June 29, 1940 (ch. 444, 54 Stat. 686), is amended as  
19       follows:

20           (1) Except as provided in paragraphs (2) and (3) of this subsection,  
21       strike “Administrator” wherever it appears and substitute “Secretary”.

22           (2) In subsection (a) of the first section, strike “‘Administrator’  
23       means the Administrator of the Federal Aviation Agency” and sub-  
24       stitute “‘Secretary’ means the Secretary of Transportation”.

25           (3) In section 4(a), strike “Administrator, and any Federal Aviation  
26       Agency” and substitute “Secretary, and any Department of Transpor-  
27       tation”.

28           (4) In section 6, strike “United States commissioner” wherever it  
29       appears and substitute “United States magistrate judge”.

30       (m) The Act of September 7, 1950 (ch. 905, 64 Stat. 770), is amended  
31       as follows:

32           (1) Except as provided in paragraph (2) of this subsection, strike  
33       “Administrator” wherever it appears and substitute “Secretary”.

34           (2) In the first section, strike “Administrator of the Federal Aviation  
35       Agency” and “‘Administrator’” and substitute “Secretary of Trans-  
36       portation” and “‘Secretary’”, respectively.

37           (3) In sections 4 and 8(a), strike “Federal Aviation Agency” and  
38       substitute “Department of Transportation”.

39           (4) In section 8(d), strike “United States Commissioner” wherever  
40       it appears and substitute “United States magistrate judge”.



(n) Section 101(1st complete par. on p. 646) of the Act of August 30, 1964 (Public Law 88–507, 78 Stat. 646), is amended by striking “Administrator of the Federal Aviation Agency” and substituting “Secretary of Transportation”.

(o) Section 9111 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4531) is amended as follows:

(1) In the introductory language of subsection (b)(1), strike “Subsection (b) of section 10530 of such title is amended by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:” and substitute “Subsection (b)(1) of section 10530 of title 49 is amended to read as follows:”.

(2) In subsection (b)(2), strike “Such subsection” and substitute “Subsection (b) of section 10530”.

(3) In the introductory language of subsection (f)(1), strike “Subsection (g) of such section is amended by striking out paragraph (1) and inserting in lieu thereof the following:” and substitute “Subsection (g)(1) of section 10530 of title 49 is amended to read as follows:”.

(4) In subsection (f)(2), strike “Such subsection” and substitute “Subsection (g) of section 10530”.

(p) Section 4007(e) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2153) is amended by inserting “and section 31307 of title 49, United States Code” immediately after “this section”.

(q) The revision of regulations, referred to in section 32705(b)(2)(A) of title 49, United States Code, as enacted by section 1 of this Act, that is required by section 7 of the Independent Safety Board Act Amendments of 1990 (Public Law 101–641, 104 Stat. 4657) shall be prescribed not later than May 28, 1991.

(r) Section 165 of the Surface Transportation Assistance Act of 1982 (Public Law 97–424, 96 Stat. 2136) is amended as follows:

(1) In subsections (a) and (d), strike “the Urban Mass Transportation Act of 1964,”.

(2) In subsection (b)—

(A) after the semicolon at the end of clause (2), add “or”; and

(B) strike clause (3).

(s) Effective on the date the regulations required under section 60101(b) of title 49, United States Code, as enacted by section 1 of this Act, are effective, section 60101(a)(21) and (22) of title 49, as enacted by section 1, is amended to read as follows:

“(21) ‘transporting gas’—

“(A) means—

1 “(i) the gathering, transmission, or distribution of gas by  
 2 pipeline, or the storage of gas, in interstate or foreign com-  
 3 merce; and

4 “(ii) the movement of gas through regulated gathering  
 5 lines; but

6 “(B) does not include gathering gas (except through regulated  
 7 gathering lines) in a rural area outside a populated area des-  
 8 ignated by the Secretary as a nonrural area.

9 “(22) ‘transporting hazardous liquid’—

10 “(A) means—

11 “(i) the movement of hazardous liquid by pipeline, or the  
 12 storage of hazardous liquid incidental to the movement of  
 13 hazardous liquid by pipeline, in or affecting interstate or for-  
 14 eign commerce; and

15 “(ii) the movement of hazardous liquid through regulated  
 16 gathering lines; but

17 “(B) does not include moving hazardous liquid through—

18 “(i) gathering lines (except regulated gathering lines) in a  
 19 rural area;

20 “(ii) onshore production, refining, or manufacturing facili-  
 21 ties; or

22 “(iii) storage or in-plant piping systems associated with on-  
 23 shore production, refining, or manufacturing facilities.”.

24 (t)(1) Not later than March 3, 1995, the Secretary of Transportation  
 25 shall complete a regulatory proceeding to consider prescribing regulations to  
 26 improve the safety and working conditions of locomotive cabs. The proceed-  
 27 ing shall assess—

28 (A) the adequacy of Locomotive Crashworthiness Requirements  
 29 Standard S-580, or any successor standard, adopted by the Association  
 30 of American Railroads in 1989 in improving the safety of locomotive  
 31 cabs; and

32 (B) the extent to which environmental, sanitary, and other working  
 33 conditions in locomotive cabs affect productivity, health, and the safe  
 34 operation of locomotives.

35 (2) SUPPORTING RESEARCH AND ANALYSIS.—In support of the proceed-  
 36 ing required under paragraph (1) of this subsection, the Secretary shall con-  
 37 duct research and analysis, including computer modeling and full-scale crash  
 38 testing, as appropriate, to consider—

39 (A) the costs and benefits associated with equipping locomotives  
 40 with—

41 (i) braced collision posts;

- 1 (ii) rollover protection devices;
- 2 (iii) deflection plates;
- 3 (iv) shatterproof windows;
- 4 (v) readily accessible crash refuges;
- 5 (vi) uniform sill heights;
- 6 (vii) anticlimbers, or other equipment designed to prevent over-
- 7 rides resulting from head-on locomotive collisions;
- 8 (viii) equipment to deter post-collision entry of flammable liq-
- 9 uids into locomotive cabs;
- 10 (ix) any other devices intended to provide crash protection for
- 11 occupants of locomotive cabs; and
- 12 (x) functioning and regularly maintained sanitary facilities; and
- 13 (B) the effects on train crews of the presence of asbestos in loco-
- 14 motive components.

15 (3) REPORT.—If, on the basis of the proceeding required under para-

16 graph (1) of this subsection, the Secretary decides not to prescribe regula-

17 tions, the Secretary shall report to Congress on the reasons for that deci-

18 sion.

19 (u) Not later than April 25, 1993, the Attorney General shall prescribe

20 the regulations required under section 33110(c) of title 49, United States

21 Code, as enacted by section 1 of this Act. Section 33110(b) of title 49 is

22 effective not later than 3 months after those regulations are prescribed but

23 not before the date on which the National Stolen Passenger Motor Vehicle

24 Information System established under section 33109 of title 49 is oper-

25 ational.

26 (v) Section 33111 of title 49, United States Code, as enacted by section

27 1 of this Act, is effective on the date on which the National Stolen Pas-

28 senger Motor Vehicle Information System is established under section

29 33109 of title 49.

#### 30 CONFORMING CROSS-REFERENCES

31 Sec. 5. (a) Sections 551(1)(H) and 701(b)(1)(H) of title 5, United States

32 Code, are amended by striking “or sections 1622,” and substituting “sub-

33 chapter II of chapter 471 of title 49; or sections”.

34 (b) Title 10, United States Code, is amended as follows:

35 (1) In section 2640—

36 (A) in subsections (a)(1)(A) and (d)(1)(B)(i), strike “title VI of

37 the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)”

38 and substitute “chapter 447 of title 49”; and

39 (B) in subsection (i), strike “sections 101(3), 101(5), 101(10),

40 and 101(15), respectively, of the Federal Aviation Act of 1958 (49

1 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))” and  
 2 substitute “section 40102(a) of title 49”.

3 (2) In section 9511(1), strike “section 101 of the Federal Aviation  
 4 Act of 1958 (49 U.S.C. 1301)” and substitute “section 40102(a) of  
 5 title 49”.

6 (3) In section 9512(b)(4), strike “section 501 of the Federal Avia-  
 7 tion Act of 1958 (49 U.S.C. App. 1401)” and substitute “section  
 8 44103 of title 49”.

9 (c) Section 1110(a) of title 11, United States Code, is amended by strik-  
 10 ing “section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)”,  
 11 “subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))”, and  
 12 “Civil Aeronautics Board” and substituting “section 40102(a) of title 49”,  
 13 “section 30101 of title 46”, and “Secretary of Transportation”, respectively.

14 (d) The last sentence of section 82 of title 14, United States Code, is  
 15 amended to read as follows: “Nothing in this title shall be deemed to limit  
 16 the authority granted by chapter 167 of title 10 or part A of subtitle VII  
 17 of title 49.”.

18 (e) Title 18, United States Code, is amended as follows:

19 (1) In section 31, strike “the Federal Aviation Act of 1958, as  
 20 amended” and substitute “sections 40102(a) and 46501 of title 49”.

21 (2) In the last sentence of sections 112(e), 878(d), 1116(c), and  
 22 1201(e), strike “section” and all that follows and substitute “section  
 23 46501(2) of title 49.”.

24 (3) In section 511(c)—

25 (A) in clause (1), strike “the National Traffic and Motor Vehi-  
 26 cle Safety Act of 1966, or the Motor Vehicle Information and Cost  
 27 Savings Act” and substitute “chapter 301 and part C of subtitle  
 28 VI of title 49”; and

29 (B) in clause (2), strike “section 2 of the Motor Vehicle Infor-  
 30 mation and Cost Savings Act” and substitute “section 32101 of  
 31 title 49”.

32 (4) In section 512(a)(2)(A), strike “the National Traffic and Motor  
 33 Vehicle Safety Act of 1966” and substitute “chapter 301 of title 49”.

34 (5) In section 553(c)—

35 (A) in clause (1), strike “section 2 of the Motor Vehicle Infor-  
 36 mation and Cost Savings Act” and substitute “section 32101 of  
 37 title 49”; and

38 (B) in clause (4), strike “section 101 of the Federal Aviation  
 39 Act of 1958 (49 U.S.C. App. 1301)” and substitute “section  
 40 40102(a) of title 49”.

1 (6) In section 831(c)(1), strike “section 101 of the Federal Aviation  
2 Act of 1958 (49 U.S.C. 1301)” and substitute “section 46501 of title  
3 49”.

4 (7) In section 844(g)(2)(B), strike “the Hazardous Materials Trans-  
5 portation Act (49 App. U.S.C. 1801, et seq.)” and substitute “chapter  
6 51 of title 49”.

7 (8) In section 1201(a)(3), strike “section” and all that follows and  
8 substitute “section 46501 of title 49;”.

9 (9) In section 1366(c), strike “interstate transmission facilities, as  
10 defined in section 2 of the Natural Gas Pipeline Safety Act of 1968”  
11 and substitute “an interstate gas pipeline facility as defined in section  
12 60101 of title 49”.

13 (10) In section 2318(c)(1), strike “section 101 of the Federal Avia-  
14 tion Act of 1958” and substitute “section 46501 of title 49”.

15 (11) In section 2516(1)(j), strike “section” and all that follows and  
16 substitute “section 60123(b) (relating to destruction of a natural gas  
17 pipeline) or 46502 (relating to aircraft piracy) of title 49;”.

18 (12) In section 3663(a)(1), strike “under subsection (h), (i), (j), or  
19 (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C.  
20 1472)” and substitute “section 46312, 46502, or 46504 of title 49”.

21 (f) Title 23, United State Code, is amended as follows:

22 (1) In section 103(e)(4)(L)—

23 (A) in clause (i), strike “the Urban Mass Transportation Act  
24 of 1964” and substitute “chapter 53 of title 49”; and

25 (B) in clause (ii), strike “section 3(e)(4) of the Urban Mass  
26 Transportation Act of 1964” and substitute “section  
27 5323(a)(1)(D) of title 49”.

28 (2) In section 142—

29 (A) in subsection (a)(2), strike “the Federal Transit Act” and  
30 substitute “chapter 53 of title 49”;

31 (B) in subsection (h), strike “the Urban Mass Transportation  
32 Act of 1964, as amended” and substitute “chapter 53 of title 49”;  
33 and

34 (C) in subsection (i), strike “section 3(e)(4) of the Urban Mass  
35 Transportation Act of 1964, as amended,” and substitute “section  
36 5323(a)(1)(D) of title 49”.

37 (3) In section 157(a)(2) and (3)(A), strike “section 404 of the Sur-  
38 face Transportation Assistance Act of 1982” and substitute “section  
39 31104 of title 49”.

40 (g) The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended  
41 as follows:

1 (1) In section 4064(b)(1)(B), strike “section 501 of the Motor Vehi-  
 2 cle Information and Cost Savings Act (15 U.S.C. 2001)” and sub-  
 3 stitute “section 32901 of title 49, United States Code,”.

4 (2) In section 4261(e) and (f)(2), strike “the Airport and Airway  
 5 Improvement Act of 1982” and substitute “section 44509 or 44913(b)  
 6 or subchapter I of chapter 471 of title 49, United States Code,”.

7 (3) In section 9502(d)(1)(B), strike “the Federal Aviation Act of  
 8 1958, as amended (49 U.S.C. 1301 et seq.),” and substitute “part A  
 9 of subtitle VII of title 49, United States Code,”.

10 (h) Section 2342(7) of title 28, United States Code, is amended by strik-  
 11 ing “described in section 202(f) of the Federal Railroad Safety Act of  
 12 1970” and substituting “taken by the Secretary of Transportation under  
 13 chapter 51 or 57 or part A of subtitle V of title 49”.

14 (i) Title 31, United States Code, is amended as follows:

15 (1) In section 3711(c)(2), strike “section 6 of the Act of March 2,  
 16 1893 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C.  
 17 13), section 9 of the Act of February 17, 1911 (45 U.S.C. 34), and  
 18 section 25(h) of the Interstate Commerce Act (49 App. U.S.C. 26(h))”  
 19 and substitute “section 21302 of title 49 for a violation of chapter 203,  
 20 205, or 207 of title 49 or a regulation or requirement prescribed or  
 21 order issued under any of those chapters”.

22 (2) In section 3726(b)(1), strike “the Federal Aviation Act of 1958”  
 23 and substitute “section 40102(a) of title 49”.

24 (j) Section 210(a)(4) of title 35, United States Code, is amended by strik-  
 25 ing “section 106(c) of the National Traffic and Motor Vehicle Safety Act  
 26 of 1966 (15 U.S.C. 1395(c); 80 Stat. 721)” and substituting “section  
 27 30168(e) of title 49”.

28 (k) Title 39, United States Code, is amended as follows:

29 (1) In section 3401(b) and (c), strike “section 1376” and substitute  
 30 “section 41901”.

31 (2) In section 5005(b)(3), strike “section 101 of the Federal Avia-  
 32 tion Act of 1958” and substitute “section 40102(a) of title 49”.

33 (3) In section 5401(b), strike “sections 1301–1542” and substitute  
 34 “part A of subtitle VII”.

35 (l) Section 2101(14)(C) of title 46, United States Code, is amended by  
 36 striking “section 104 of the Hazardous Materials Transportation Act (49  
 37 App. U.S.C. 1803)” and substituting “section 5103(a) of title 49”.

38 (m) Title 49, United States Code, is amended as follows:

39 (1) In section 103(c)(1), strike “section 6(e)(1), (2), and (6)(A) of  
 40 the Department of Transportation Act (49 App. U.S.C. 1655(e)(1),  
 41 (2), and (6)(A))” and substitute “section 20134(c) and chapters 203–

211 of this title, and chapter 213 of this title in carrying out chapters 203–211”.

(2) In section 104(c)(2), strike “31” and substitute “315”.

(3) In section 105(d), strike “the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.)” and substitute “chapter 301 of this title”.

(4) In section 106—

(A) in subsection (h), strike “Section 103 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1303)” and substitute “Section 40101(d) of this title”; and

(B) in subsection (j), strike “section 312(e) of the Federal Aviation Act of 1958” and substitute “section 44507 of this title”.

(5) In section 109(a) and (b), insert “App.” immediately after “(46”.

(6) In section 302(b), strike “Subtitle I and chapter 31 of subtitle II of this title and the Department of Transportation Act (49 App. U.S.C. 1651 et seq.)” and substitute “This subtitle and chapters 221 and 315 of this title”.

(7) In section 306(b), strike “section 332 or 333 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), title V or VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq., 851 et seq.), or section 4(i) or 5 of the Department of Transportation Act (49 App. U.S.C. 1653(i), 1654)” and substitute “section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.)”.

(8) In section 321, strike “section 101(2), (4), and (8) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))” and substitute “section 40102(a) of this title”.

(9) In section 501—

(A) in subsection (a)(2), strike “section 3101” and substitute “section 31501”;

(B) in subsection (a)(3), strike “section 3102(c)” and substitute “section 31502(c)”;

(C) strike subsection (b) and substitute the following:

“(b) APPLICATION.—This chapter only applies in carrying out sections 20302(a)(1)(B) and (C), (2), and (3), (c), and (d)(1) and 20303 and chapters 205 (except section 20504(b)), 211, 213 (in carrying out those sections and chapters), and 315 of this title.”.

(10) In section 507(c), strike “section 3102 of this title or the Motor Carrier Safety Act of 1984” and “such section or Act” and substitute “subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title” and “any of those provisions”, respectively.

(11) In section 521(b)—

(A) in paragraph (1)(A), strike “section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986” and “such sections or Act” and substitute “a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title” and “any of those provisions”, respectively;

(B) in paragraph (2)(A), strike “pursuant to section 3102 of this title or the Motor Carrier Safety Act of 1984” and substitute “under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title”;

(C) in paragraph (2)(B), strike “section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986” and substitute “section 31302, 31303, 31304, 31305(b), or 31310(g)(1)(A) of this title”;

(D) in paragraph (3), strike “section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986” and substitute “subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title”;

(E) in paragraph (5)(A), strike “section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986” and “such sections or Act” and substitute “a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title” and “any of those provisions”, respectively;

(F) in paragraph (6)(A), strike “section 3102 of this title, the Motor Carrier Safety Act of 1984”, “such section or Act”, and “liable” and substitute “subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title”, “any of those provisions”, and “subject”, respectively;

(G) in paragraph (6)(B)(i), strike “section 12002, 12003(b), 12003(c), 12004, 12005(b), or 12008(d)(2) of the Commercial



Motor Vehicle Safety Act of 1986” and substitute “section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title”;

(H) in paragraph (6)(B)(ii), strike “section 12019 of such Act”, “section 12003(a) of such Act”, and “such section 12003(a)” and substitute “section 31301 of this title”, “section 31303(a) of this title”, and “section 31303(a)”, respectively;

(I) in paragraph (12), strike “any provision of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1812)” and “such Act” and substitute “chapter 51 of this title” and “chapter 51”, respectively; and

(J) in paragraph (13), strike “section 204 of the Motor Carrier Safety Act of 1984” and substitute “section 31132 of this title”.

(12) In section 526, strike “this chapter, section 3102 of this title, or the Motor Carrier Safety Act of 1984, a person that knowingly and willfully violates a provision of this chapter or such section or Act, or a regulation or order of the Secretary of Transportation under this chapter or such section or Act” and substitute “a provision of this chapter, subchapter III of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions”.

(13) In section 10102(9), strike “the Federal Aviation Act of 1958” and substitute “part A of subtitle VII of this title”.

(14) In section 10322(a), strike “subtitle” wherever it appears and substitute “title”.

(15) In sections 10364(a) and 10385(a), strike “section 5 of title 41” and substitute “section 3709 of the Revised Statutes (41 U.S.C. 5)”.

(16) In sections 10527(a), strike “subchapter” and substitute “title”.

(17) In section 10528, strike “subchapter” and “subtitle” wherever either word appears and substitute “title”.

(18) In section 10529(a), strike “(12 U.S.C. 1141j(a))” and substitute “(12 U.S.C. 1141j(a))”.

(19) In sections 10542(a)(2) and 10544(d)(1)(B), insert “App.” immediately after “(46)” wherever it appears.

(20) In section 10561(b)(1), strike “chapter 20” and substitute “part A of subtitle VII”.

(21) In section 10703(a)(4)—

1 (A) in paragraph (D)(ii), insert “App.” immediately after “(46”  
 2 wherever it appears; and

3 (B) in paragraph (E), strike “(46 U.S.C. 801 et seq.)” and  
 4 “(46 U.S.C. 843–848)” and substitute “(46 App. U.S.C. 801 et  
 5 seq.)” and “(46 App. U.S.C. 843 et seq.)”, respectively.

6 (22) In section 10721(a)(1), strike “Section 5 of title 41” and sub-  
 7 stitute “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

8 (23) In section 10735(b)(1), strike “under this title” and substitute  
 9 “under this subtitle”.

10 (24) In section 10903(b)(2), strike “section 11347 of this title and  
 11 section 405(b) of the Rail Passenger Service Act (45 U.S.C. 565(b))”  
 12 and substitute “sections 11347 and 24706(c) of this title”.

13 (25) In section 10922—

14 (A) in subsection (c)(1)(E), strike “provisions of section 12(f)  
 15 of the Urban Mass Transportation Act of 1964” and substitute  
 16 “section 10531 of this title”;

17 (B) in subsection (c)(2)(D), strike “subtitle” wherever it ap-  
 18 pears and substitute “title”;

19 (C) in subsection (c)(4)(C) and (j)(1), strike “subchapter”  
 20 wherever it appears and substitute “title”; and

21 (D) in subsection (j)(2)(C), strike “subtitle” and substitute  
 22 “title”.

23 (26) In section 10927(a)(1), insert “section” before “10923”.

24 (27) In section 10935(a) and (e)(3), strike “subchapter” and sub-  
 25 stitute “title”.

26 (28) In section 11125(b)(2)(A), strike “the Federal Railroad Safety  
 27 Act of 1970 (45 U.S.C. 431 et seq.)” and substitute “chapter 201 of  
 28 this title”.

29 (29) In section 11126(a), strike “11501(c)” and substitute  
 30 “11501(f)”.

31 (30) In section 11303(a), strike “the Ship Mortgage Act, 1920”  
 32 wherever it appears and substitute “chapter 313 of title 46”.

33 (31) In section 11347, strike “section 405 of the Rail Passenger  
 34 Service Act (45 U.S.C. 565)” and substitute “sections 24307(c),  
 35 24312, and 24706(c) of this title”.

36 (32) In section 11348(a), strike “section 504(f),” and substitute  
 37 “sections 504(f) and”.

38 (33) In section 11504(b)(2), strike “section 204 of the Motor Car-  
 39 rier Safety Act of 1984 (49 App. U.S.C. 2503)” and substitute “sec-  
 40 tion 31132 of this title”.

1 (34) In section 11701(a), strike “section 10530 of this subtitle” and  
 2 substitute “section 10530 of this title”.

3 LEGISLATIVE PURPOSE AND CONSTRUCTION

4 Sec. 6. (a) Sections 1–4 of this Act restate, without substantive change,  
 5 laws enacted before February 1, 1993, that were replaced by those sections.  
 6 Those sections may not be construed as making a substantive change in the  
 7 laws replaced. Laws enacted after January 31, 1993, that are inconsistent  
 8 with this Act supersede this Act to the extent of the inconsistency.

9 (b) A reference to a law replaced by sections 1–4 of this Act, including  
 10 a reference in a regulation, order, or other law, is deemed to refer to the  
 11 corresponding provision enacted by this Act.

12 (c) An order, rule, or regulation in effect under a law replaced by sections  
 13 1–4 of this Act continues in effect under the corresponding provision en-  
 14 acted by this Act until repealed, amended, or superseded.

15 (d) An action taken or an offense committed under a law replaced by sec-  
 16 tions 1–4 of this Act is deemed to have been taken or committed under the  
 17 corresponding provision enacted by this Act.

18 (e) An inference of legislative construction is not to be drawn by reason  
 19 of the location in the United States Code of a provision enacted by this Act  
 20 or by reason of a caption or catch line of the provision.

21 (f) If a provision enacted by this Act is held invalid, all valid provisions  
 22 that are severable from the invalid provision remain in effect. If a provision  
 23 enacted by this Act is held invalid in any of its applications, the provision  
 24 remains valid for all valid applications that are severable from any of the  
 25 invalid applications.

26 REPEALS

27 Sec. 7. (a) The repeal of a law by this Act may not be construed as a  
 28 legislative implication that the provision was or was not in effect before its  
 29 repeal.

30 (b) The laws specified in the following schedule are repealed, except for  
 31 rights and duties that matured, penalties that were incurred, and proceed-  
 32 ings that were begun before the date of enactment of this Act:

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July 2 1864	216 .....	15 .....	
Mar. 3 1873	226 .....	2(words after 2d semicolon) .....	
June 20 1874	331 .....	.....	
June 22	414 .....	.....	

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Feb. 4 1887	104 .....	25 .....	
Mar. 3	345 .....	.....	
Mar. 2 1893	196 .....	.....	
Apr. 1 1896	87 .....	.....	
Mar. 3 1897	386 .....	(proviso under heading “Transportation and Recruiting, Marine Corps”) .....	
Mar. 3 1901	831 .....	(last proviso of last par. under heading “Pay Department”) .....	
Mar. 2 1903	976 .....	.....	
Feb. 23 1905	744 .....	.....	
June 29 1906	3594 .....	.....	
June 30	P.R. 46 .....	.....	
Mar. 4 1907	2939 .....	.....	
May 27 1908	200 .....	1(6th par. last sentence under heading “Interstate Commerce Commission”, 1st complete par. on p. 325).	
Mar. 4 1909	299 .....	1(6th par. last sentence under heading “Interstate Commerce Commission”) .....	
Apr. 14 1910	160 .....	.....	
May 6	208 .....	.....	
Feb. 17 1911	103 .....	.....	
Mar. 4 1915	169 .....	.....	
May 4 1916	109 .....	.....	
Aug. 29	415 .....	.....	
Feb. 28 1920	91 .....	441, 500 .....	
Mar. 4 1921	161 .....	1(last proviso in par. under heading “Transportation Facilities on Inland and Coastal Waterways”)	
Dec. 15	1 .....	1(last par. under heading “Board of Mediation and Conciliation”) .....	
June 7 1924	355 .....	.....	
Mar. 4 1927	510 .....	.....	

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Feb. 14 1931	189 .....	.....	
June 13 1934	498 .....	.....	
June 19	654 .....	.....	
	656 .....	2 .....	
Aug. 7 1935	455 .....	.....	
Aug. 26 1937	818 .....	.....	
June 27 1939	244 .....	.....	
Aug. 9	618 .....	.....	
	633 .....	1(1st. par. under heading "Civil Aeronautics Authority.") .....	
Apr. 22 1940	124 .....	.....	
July 2	526 .....	.....	
Sept. 18	722 .....	14(b) .....	
June 28 1941	258 .....	201(last par. under heading "Civil Aeronautics Board") .....	
July 24 1942	522 .....	.....	
May 7 1943	94 .....	(par. under heading "Office of Administrator of Civil Aeronautics") .....	
June 10	121 .....	.....	
June 30 1944	333 .....	.....	
July 1	373 .....	813(5th, 6th complete pars. on p. 718) .....	
Oct. 3	479 .....	13(g) .....	
Aug. 8 1946	911 .....	.....	
May 27 1947	85 .....	.....	
July 30	404 .....	2 .....	
Aug. 4	471 .....	.....	
Apr. 17 1948	192 .....	.....	
June 16	473 .....	.....	
	482 .....	.....	

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June 29	713 .....	.....	
	738 .....	.....	
July 1	792 .....	.....	
1949			
July 25	359 .....	.....	
July 26	362 .....	.....	
	363 .....	.....	
Aug. 12	423 .....	.....	
Aug. 15	426 .....	.....	
Aug. 30	520 .....	.....	
Oct. 1	589 .....	.....	
Oct. 25	724 .....	.....	
Oct. 26	751 .....	.....	
1950			
Feb. 9	5 .....	.....	
Mar. 18	72 .....	6, 7 .....	
Aug. 3	517 .....	.....	
Aug. 5	591 .....	.....	
Aug. 8	643 .....	.....	
Aug. 9	655 .....	.....	
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Sept. 27	1055 .....	.....	
Sept. 29	1107 .....	.....	
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1951			
Jan. 9	1214 .....	.....	
June 14	123 .....	.....	
Oct. 11	495 .....	3, 4 .....	
Oct. 31	655 .....	55(b) .....	
1952			
June 28	485 .....	1(5) .....	
July 14	740 .....	.....	
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July 8	181 .....	.....	
Aug. 8	379 .....	.....	
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Aug. 3	494 .....	.....	

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	655 .....	.....	
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1957			
June 13	85-50 .....	.....	
Aug. 14	85-135 .....	.....	
Aug. 26	85-166 .....	.....	
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Apr. 9	85-373 .....	.....	
Apr. 11	85-375 .....	.....	
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Aug. 23	85-726 .....	(less 613(a), (b), 1402(a), (e)-(g), 1404, 1406, 1411) .....	
1959			
Mar. 18	86-3 .....	21 .....	
June 25	86-70 .....	39 .....	
June 29	86-72 .....	.....	
July 8	86-81 .....	.....	
Aug. 11	86-154 .....	.....	
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1960			
June 29	86-546 .....	1 .....	
July 12	86-624 .....	37 .....	
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July 14	86-661 .....	.....	
Sept. 13	86-758 .....	.....	
	86-762 .....	.....	
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July 20	87-89 .....	.....	
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July 10 1962	87-528 .....	.....	
Oct. 15	87-810 .....	.....	
	87-820 .....	.....	
Mar. 11 1964	88-280 .....	.....	
June 30	88-346 .....	.....	
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Aug. 14	88-426 .....	305(16) .....	
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Sept. 30	89-220 .....	13 .....	
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May 25 1967	90-19 .....	20 .....	
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	93-239 .....	4 .....	
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